

THE  
ANCIENT and PRESENT  
MANNER  
Of holding  
Parliaments  
IN  
ENGLAND;  
With their Priviledges.

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BY  
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of Commons.

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20

W. V. N. H. R.

giving

Documents





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CHAP.

## CHAP. I.

## Of SUMMONS.

Who were anciently summoned to Parliament.

**A**rchbishops, and Bishops, *Ratione specialis dignitatis et tenure.*  
All Abbots and Priors which held by an Earldom or a Barony, *Ratione tenure.*

All Earls and Barons by reason of their Inheritable Nobility and tenure, and their Peers also, *ratione tenure.*

The Judges and Barons of the Exchequer, the Kings privy Council, and his learned Council were summoned also but *neque tenure, neque dignitatis ratione*, and they made no Proxies for they had no voice.

The Knights of the Shires.

The Barons of the Cinque Ports.

The Citizens and Burgessees were ever elected and sent to the Parliament.

The Officers, as the Clerk of the Crown.

B

The

The Clerk of the Parliament, and the gentleman-Usher attended *Ratione officii* without any summons.

Whether the Summons were anciently by one general Writ or particular Writs.

It appears in that Antient Manuscript, *Modus tenendi Parliamentum*. That Arch-Bishops, Abbots, and Pryors which held by *Baroniam*, *summoneri debent*.

*Minores Clerici nec minores laici non summoneri debent, sed si eorum presentia necessaria fuerat, Rex solebat talibus brevibus suis mittere, Rogand. quod Parliamentum suum interessent.*

Hence it may be gathered that in those times *viz.* before the Conquest, the Lords spiritual and temporal, and the Peers were summoned to Parliament by one general Summons, and that the others who were neither Lords nor Peers had particular Writs, but it is unlikely that William the Conqueror did send out such Summons to the Lords: For how could the antient Baronage (who were translated by Conquest to the Normans) take notice thereof, their Lands, and Honors being seized for the King? It is probable he sent particular Writs of Summons to his Normans (new created Lords) and to such English (if any) as he continued

tinued in that degree of honour. *Vide Math. Paris. page 247. in Charta. R. his summoneri faciemus omnes Archiepisc. Episc. &c.*

*Comites & Majores Barones, Regni nostri singulatim per literas nostras, &c.*

But as touching the Peers. Their Summons during his time continued as before, for it followes in the same Charter. *Et preterea faciemus summoneri in generali per vice-comites & ballivos nostros omnes alios qui in Capite tenent, &c.*

By these tenants in Capite understand those onely who held land in capite of the King (*Ad valentiam unius comitatus, vel Baronie integra*, as it is in that ancient Manuscript *modus tenendi Parliamentum*) and they are there named Peers.

Divers learned Heralds not knowing any difference between the Lords and their Peers have run into these errors, viz.

First, that all heretofore came to Parliament who had Lands of an entire County or Barony, and that Henry the third, having smarted by such a confused company of Barons did (after the battail of *Evesham*) first ordain, that those Earls and Barons to whom he directed his writs, should onely come to Parliament, for which they vouch no Record, but

only the first Writ of Summons extant, *Ann.* 49. H. 3. 14. *December*, and affirm the same to be after the battail of *Evesham*, and that this was the first time that Barons were called by special Writs.

**Secondly**, that the Writ of Summons did create a Baron.

**Thirdly**, the first Writ did ennoble the person so created, and if the Son was also summoned, then the blood was ennobled,

Not observing the difference between Peers and Barons, the one being admitted *ad libitum regis*, the other never if once created, being of full age, within the Land, and *Rectus in Curia*, as shall be declared hereafter in this Chapter.

The first of these is easily refuted and satisfied, for the practice appears to be otherwise touching the Earls and Barons in the time of King *John*, as by the afore said Charter in *Mathew Paris*.

And the very date of the Writs which are vouched proves, that the practise was also in H. 3. time, who began his Raigh the *xixth*. of *October* and the Writs of Summons bear date in *December*, and the battail of *Evesham* 49. H. 3. happily this King did first ordain that no Peer should come to Parliament, unless such as had particular Writs of Summons, and



and therefore the Heralds are to be excused, for the Peers once Summoned, have been reputed Lords of Parliament, and the Peers have been anciently stiled Barons, Vide Mr. Selden in his *Titles of Honour*: That Mathew Paris saith that Hen. 3. did number 250 of his Barons (who were as I conceive) *Barones minores* or Peers) and not those who were Barons by Inheritance whom Mathew Paris in the other place stiles *Barones Majores*, for they never attained to that number: Also by this word (Peers) are understood all the Lords spiritual and temporal in the second Parliament of 15. E. 2. & 1. E. 3. touching the banishment of the *Spencers*; so that the Heralds might easily be deceived therein, especially since the Writs unto Barons and Peers, were all one, and they were ranked together promiscuously in the Book of Summons, and some Peers placed there above ancient Barons.

But of this (*viz.*) that Peers were summoned, and omitted again (*ad libitum Regis*) And that Barons were ever created by Investiture of Robes, and that the Writ only did create a Baron, and that the first Writ did enoble both the person and blood of him that was created more shall be said hereafter in this Chapter in the title of Omission.

Here

**H**ere I will only remember that this word (*Baron*) was anciently a general name to all those that held power of Iudicature) as well as to the Parliament Barons: the Freeholders in a Court Baron were anciently named Barons, and that Court stiled (*Curia Baronum* in respect of them, and not (*Curia Baronis*) as now in respect of the Lord of the Mannor; and the Aldermen of *London*, were anciently so named, and that they of the *Cinque ports*, retain it to this day, and so do the Barons of the Exchequer who were first called (*Sagi Barones*) for they were *sagaces ad Compotes recipiendos & allocandos*.

§. 2.

*The ancient form of the Writ.*

An. 1265.

**T**HE first writ of Summons extant upon Record is that of 49. H. 3. viz.

*Henricus, dei gratia, Rex Anglia, Dominus Hibernie, & Dux Aquitania, venerabili in Christo patri. R. eadem gratia Episcopo Dunelm. Salutem. cum post graviaurbationum discrimina dudum habita in Regno, Charissimus filius Edwardus primogenitus noster, pro pace in regno nostro essensuranda, & firmanda, ab eis traditus esset, & jam feduta (beneficius*

diētus deus) turbatione, prædicta super delibera-  
tione ejusdem salubriter providenda, & plena  
securitate, & tranquillitate pacis, ad honorem  
dei, & Utilitatem totius Regni nostri firman-  
da, & totaliter complenda, ut super quibusdam  
aliis Regni nostri negotiis, quæ sine consilio  
vestro, & aliorum prælatorum & magnatum  
nostrorum volumus expediri, cum iisdem tracta-  
tum habere nos oportet: volis mandamus,  
Rogantes in fide & dilectione quibus nobis te-  
nemini, quod omni occasione post posita & nego-  
tiis aliis pretermiſſis, Sitis ad nos London, in  
Octabis sanct. Hillarii proxim. futur. no-  
biscum, & cum prædictis prælatis, & magnati-  
tibus nostris quos ibid. vocari fecimus super  
premissis tractatur. & concilium impensur.  
& hoc sicut nos et honorem nostrum et vestrum,  
nec non & communē Regni nostri tranquili-  
tatem diligitis, nullatenus omittatis: Teste m.  
ipso xiiii. Decemb. Ann. regni nostri 49  
eodem modo mandatum est Episc. Carl. & c.  
sub data xiiii. Decemb.

In forma prædict. subscribitur Abbot. &  
Prioribus subscriptis, & c.

Subdata apud Woodstock xiiii. Decemb.

In forma prædict. mandatum est comitibus  
et aliis subscriptis dat apud Woodstock viz

Comi-

Comiti Leiceſter

Comiti Gloceſter.

Comiti Norf.

&amp; Mareſchal. Angl:

Comiti Oxon.

Comiti Derby.

Rad. de Camois

Roger de ſanct. Johanne

Hugo de Spencer. Juſtic. Anglie.

Johani filii Johannis

Will. de Munchef.

Nich. de Segrave

Johanni de Veſcye

Rad. Baſſet de Drayt.

Henrico de Haſtings

Galfrid. de Luſie

Roberto de Roes

Johanni de Eynil

Ada de Novo Mercato

Waltero de Colvil

Gulielmo de Wyrmigey.

Roger de Bertram

Roberto Baſſet de Sapcott.

Gilbert. de Gaunt.

Item

*Item Mandatum est singulis Comitibus per Anglaim quod venire faciant duos Milites de legaliorib. & discretioribus militibus singulorum Comitatus ad Regem, Lond. in Octabis predictis in forma predicta.*

*Item in forma predicta scribitur Civibus Ebor. Civibus Lincoln. & Cateris Burghensibus Anglia, quod Mittant.*

*Item in forma predicta Mandatum est Baronibus, et probis hominibus quinq; Portuum, &c.*

*The difference between this Writ, and the Writ at this day.*

**T**his is special declaring the cause of the Summons, and so were divers others of *Edw. the first, Edw: 2. Ed. 3. and Rich. 2.* but for the most part they were generall as at this day, and none speciall after the seventh year of *Rich. 2.* But Vide *Matthew Paris, page 247. in Charta Regis Johannis in omnibus litteris submonitionis illius Exponemus, &c.*

And also this Writ was alike unto the Lords and Judges (for such were *Johannes de Eynil*) and they that followed; and so the Writs were all alike in divers yeares of *Edw. 1. in most of Edw. 2. and in many of Edw. 3.*

*Of*

*Of the title of the party summoned.*

**T**he Bishops Christen-names were ever mentioned and stiled anciently *Venerabili in Christo Patri*, &c.

But of the latter times the Archbishop is stiled *Reverendissimus*, and all others *Reverendi in Christo Patres*.

The Christian names of the Abbots and Priors were never mentioned, they were stiled *Dilecto in Christo Abbati Sanct. Augustini*, &c.

*The title of the Prince.*

**I** find no other Attribute to the Prince then *Charissimus* in the time of E. 1. E. 2. and E. 3. and H. 4. And that is omitted in 24 E. 3. and in the 26 E. 3. It is thus, *Rex dilecto, & fidei Edwardo Principi Wallie, Duci Cornubie, & Comiti Cestrie, salutem.*

*The Titles of a Duke, Earl, and Baron.*

**W**ere stiled all alike, *Prout, dilecto, & fidei suo Henrico duci Lancast. salutem*, Anno 29 E. 3. Neither had any of the Kings brethren, Nephews, or Uncles, any other title

Cap. 1. *Of Summons.*

11

title in the time of *Edw. 1. Edw. 2. and Ed. 3.*

But when *E. 3.* had created his own Children Dukes, and Earls, then they were stiled *Filii sui Charissimi*: And *R. 2.* named them *Avunculos*, or *Consanguineos suos Charissimos*, but no other had that Attribute of *Charissime* in the title of his Writ, although he were the Kings kinsman, *prout Anno 16 E. 2. dilecto & fideli Consanguineo Ricar. Comit. Arundel, & Surrey.*

*The Titles of Barons and Peers.*

They never had any other title then *dilecto & fideli*. After the French Wars some of them had the addition of *Chivaler*: The first so stiled was *William de Aldeburgh*, *Anno 49 E. 3.* I remember no other in the time of *E. 3.* but *Wells*, *codem Anno 49 E. 3.* in the Prorogation of that Parliament, and he was summoned without that Addition: *Anno 50 E. 3.* and after during his life.

And some 4. had that Addition, *Annis R. 2. H. 4. & H. 5.* but after 3 *H. 6.* they all had that title of *Chivaler*, but it was not anciently a Note of honour, for in *Annis 1, 2, & 3 R. 2.* some of the Judges had the same, *viz. John Knevet, and Roger de Aston.*

The

The title *Baron* had *Dominus* in the Writ.

The Lord *Stafford* and *Greystocke* were usually summoned by the title of their Barony, prout *Anno 27 E. 1. Edw. Baroni de Stafford, Anno 23 E. 1.*

*Johanni Baroni de Greystocke*, omitting their Surnames of *Bagot*, and I find others in the time of *H. 6.* who had the title of *Dominus*, happily they were but then created, which I leave to the search of others, I will onely recite their names.

*Edwardo de Grey, domino de Ferrariis de Grebye Henrico de Piercye, Carol. domino de Poynings, An. 25 H. 6. 24 Decemb.*

*Johanni de Beauchamp, Militi, domino Beauchamp, Jacobo Fiennes Militi domino de Saye, & de Sele, Anno 27 H. 6. 20 Januarij.*

*Roberto Hungerford Militi domino de Moleyns, Willielmo Bouchier Militi domino Fitzwaryn, Willielmo Beauchamp Domino de sancto Amand. teste R: apud Westminst. 17 die Maij, Anno 27 H. 6.*

*R. dilecto, & fideli suo Henrico Bromflet Militi, Baroni de Vessye salutem, quia, &c. Volumus enim vos, & hered. vestros Masculos, de corpore vestro legitime exeuntes Barones de Vessye existere. Teste Rege apud Westminster*



minster 24 day of *Januarij*, Anno 27 Henry 6.

*R. dilecto & fideli suo Willielmo Bonevill Militi domino de Clinton salutem quia, &c. sicut in aliis brevibus T.R. apud Westminster x<sup>o</sup> die Martii, Anno 27 H. 6.*

*Johanni Sturton Militi, domino Sturton, Anno 28. H. 6. — per ipsum Regem.*

*Edwardo Nevil Militi, domino de Bergaveny, Thoma domino de Roes, Thoma Grey dom. de Rutbin, Thoma Piercy Militi domino de Egremont, Willielmo Fines, Militi domino de Say, Anno 29 H. 6. T. R. 23 April.*

*Per ipsum Regem.*

*Johanni Domino de Clinton, Anno 33 H. 6. J<sup>26</sup> Maij, Thoma Stanley, Militi domino de Stanley T. R. 15 die Januarij per ipsum Regem & consilium in Parlamento, summoned to the Parliament of the 33 H. 6. and 34 H. 6.*

*Richardo Fines domino de Dacre Militi, Ricard. Wells, domino Willoughby, Militi Johanni Clifford, domino de Clifford, Militi eodem Anno Johanni Nevill, domino de Nevill T. R. apud Coventry 20 Novemb. per litter. de privato Sigillo, Anno 38 H. 6. 30 Julij, per ipsum Regem.*

*Johanni*

*Johan. Nevil domino de Mountag. Chr. &c.*  
 And in all these times the summons to the Lord Gristocke, are *Rad. Greystock Chr.* omitting Barony, which he had in his ancient Writs.

And these Lords who in the time of *H. 6.* (Barons being then most usually created by Patent) were stiled *Domini*, had their summons in *E. 4.* not the word *Chivaler* onely, since when they all have no other Addition.

*To the Judges.*

**T**HE Judges ever had the title of *Dilecti & fideles* in their Writs, and retain the same to this day.

, Next to the title is considerable the form of the *Mandamus*, how it is to the Lords Spiritual, and how to the Lords Temporall, and the Judges, and others of the Kings learned Council.

And then (what the Lords and what the Judges) and others were commanded to do by their Writs or Summons.

*The*

*The Mandamus to the Bishops.*

**V**obis Mandamus in fide & dilectione quibus nobis tenemini, quod, &c. Anno 49 H. 3. Vos effectuose requirimus, et Rogamus quod, &c. Anno 27 E. 1.

Vobis Mandamus quod, &c. Anno 32 E. 1. & 5 E. 3.

Vobis Mandamus firmiter Injungentes quod, &c. Anno 2 E. 2. Anno 1 E. 3. And in all other Parliaments thus.

Vobis Mandamus in fide et dilectione quibus nobis tenemini, firmiter Injungentes quod, &c.

And so it continues unto this day, and the like to the Abbots and Priors.

The Mandamus to the Temporal Lords,  
Anno 49 E. 2.

**A**fter the Writ to the Bishops which is entred at large, it followeth in the Roll.  
Item in forma prædicta Mandatum est Comitatibus, &c.

And I find the Mandamus to the Lords Temporal, Anno 23 E. 1. bis, et Anno 24 E. 1. & Anno 2 E. 2. to be In fide et dilectione as to the Bishops, Anno 6 Ric. 2. Consimile to the Duke of Lancaster.

But

But in all other Summons *In fide et homagio* untill 22 *Ed. 3.* and 25 *Ed. 3.* And then the summons to the King of *Scots*, and Prince of *Wales*, *In fide et Legiantia*: And Anno 45 *E. 3.* *Consimile* to them all, and so it continues to this day.

*Vobis Mandamus in fide et legiantia quibus nobis tenemini, firmiter Injungentes quod, &c.*

*The next observation in the Writ of Summons is what they are commanded to do:*

**T**he Lords Spiritual and Temporal are *Tractatur cum Rege, et Cateris Pralatis, Magnatibus, et proceribus et Consilium suum impensur.* But the forms hereof in the auncient Writs of *E. 1.* are divers, *prout.*

*To the Bishops.*

**A**nno 23 *E. 1.* *Super quibusdam Arduis negotijs nos et regnum nostrum et vos ceterosq; Pralatos de eodem Regno tangentibus, quæ sine vestra et eorum presentia volumus expediri, vobis, &c. quod, &c. Sitis, &c. super dictis Negotijs tractaturi, et vestrum Consilium impensuri, 23 Junij.*

*To*

To the Temporall Lords.

**E**odem Anno 23 Junij, *supra quibusdam*, &c. Nos, et Regnum Nostrum et vos ceterosq; proceres et magnates de eodem Regno tangentibus qua sine, &c. Ut *supra*.

To the Judges, eodem An.

**S**uper quibusdam arduis negotiis nos et Regnum nostrum ac vos ceterosq; de consilio nostro tangentibus qua sine, &c. Ut *supra* in Mandat. Episc.

The Writ to the Bishops recites the wrong done by the French King in Gascony, and his Army, prepared to invade England it self: And then thus, 23 Ed. 1. 30 September.

*Quia provisæ farula minus ledant et res nostra maxima sicut ceterorum Regni consilium agitur, in hac parte vobis Mandamus in fide et dilectione quibus nobis tenemini, firmiter injungentes quod die dominica proxima post Festum Sancti Martini in hieme proxim. futurum apud Westminster, personaliter interitis premonuentes Priorem et Capitulum, &c. Ad tractandum, ordinand. et faciendum nobiscum*

*et cum Ceteris Prælatiſ et proceribus et alijs Incolis Regni noſtri qualiter fit huiusmodi periculis, et excogitatis malitijs obviandum, T.R. &c.*

*Conſimile to the Earls and Barons, &c. omitting onely the Clause Premunientes.*

By theſe words, *alijs Incolis Regni* are underſtood the Commons, who have no ſuch command in any other Writ (this onely excepted) Neither had the Clergy any ſuch command in any other Writ then this:

*Memorand.* that this time the King obtained a great ſubſidie of the Clergy and Laity.

To conclude this point, the Lords were ſummoned to treat with the K. and the other Lords, and to give their Counſel.

Onely in this laſt recited Writ is omitted to give Counſel.

### *The Judges and others of the Kings Counsell.*

**T**hey are *Tractare cum Rege et cum Ceteris de conſilio Regis et conſilium ſuum impendere, &c. Prout nobiſcum, et cum ceteris de conſilio noſtro ſuperdictis Negotijs tractaturi, veſtramq; conſilium impenſuri, &c.*

*Conſimile*

Consimile in most years of *Ed. 1.* yet their Writs were oftentimes all one with those to the Lords, prout *Anno 23 E. 1.* and *27 E. 1.* and in most years of *E. 2.*

The first Parliament of *E. 3.* agreed with that of *28 of E. 1. viz. Tractatur. vobiscum et cum Cateris de Consilio nostro vestrumque consilium impendere*, prout *Anno 4 E. 3. & 5, 6. & 7. &c. Usq; 20 E. 3.*

From the *20<sup>th</sup>* year of *E. 3.* until the *46.* their Writs agree with the Lords in this Clause (*viz.*) *Vobiscum et cum dictis Prelatis, Magnatibus, et proceribus dicti Regni nostri tractaturi, vestrumq; Consilium impenduri.*

And in two Parliaments of *E. 3. (viz.) Anno 1 E. 3. 11 Decemb. & 2 E. 3.* it is *Nobiscum tractatur. &c.* omitting *et cum Cateris de Consilio.*

*Anno 27 E. 1.* it is *Nobiscum et cum Prelatis, Magnatibus, et proceribus et alijs de consilio nostro, &c.*

But from *46 of E. 3.* to this day it agrees with that of *28<sup>o</sup> E. 1. (viz.) Nobiscum et cum cateris de consilio nostro, &c.*

*Per Clerum.*

**T**He Bishops were summoned to appear themselves in person, and to warn the Clergy of their Diocels to appear in this manner (*viz.*)

The Dean and Pryor of their Church, and the Arch-Deacons of every Deanery of the Diocels to appear in person.

The Chapter of the Church were to send one Proctor, and the Clergy of the Diocels two, *Plenam et sufficientem potestatem ab ipsis Capitulo et Clero habentes, ad faciendum, et consentiendum iis qua tunc ibidem de communi consilio (divina favente Clementia) ordinari contigerint, &c. Anno E. 3.*

In the first summons *Anno 23 E. 1.* where this Clause is recorded in the Bishops Writs it is,

*Ad tractandum, ordinandum, et faciendum nobisc. et cum Ceteris Prelatis, et Procuratoribus, et aliis Incolis Regni nostri, &c.*

But this cannot be alledged for a præcedent, for it is not to be found in any of the former, or subsequent Writs, they all agreeing with this of 4 E. 3.

Here may be a question, whether the Clergy did anciently come to the Parliament (without



(without the Kings W R I T they cannot come) And they are omitted in the first Summons which we have recorded (*viz.*)

*An<sup>o</sup> 49 H. 3.* And in the first Parliament of 23 E. 1. and in divers other following Parliaments, *prout An<sup>o</sup> 27 E. 1: Febr. 6. An<sup>o</sup> 28 E. 1: Septemb. 26. An<sup>o</sup> 3 E. 2: Octob. 26. An<sup>o</sup> 16 E. 2: Septemb. 18. & An<sup>o</sup> 6 E. 3: 26 July*, but never after the 6 year of E. 3. *quare rationem.*

*Per Communicatem.*

**T**he Commons were not summoned, but elected upon the Kings Writs to the Sheriff, &c. as shall be declared in the end of this Chapter, and were commanded to come to the Parliament, *Plenam, et sufficientem potestatem habentes ad faciend. et consentiend. de hijs quæ de communi consilio (faventi Dom.) ordinari contigerint, &c. An. 4. E. 3.*

With this Writ agree all the former and subsequent Writs; divers additions have been by statute touching the Election, but this Clause never altered.

The Lords Spirituall and Temporal are to treat with the King, and the other Lords present, and to give their counsel.

The Judges are to treat with the King and the rest of his learned Council.

The Clergy are to come with power to do and consent unto that which shall be ordained by the Common Council of the Land, the Parliaments.

And this is the cause that all Judgements in Parliament were given by the Lords, and not by the Commons, yet they were parties to the Refusall of Judgements given in Parliaments.

All Petitions directed to the King and his Council were handled by the Judges (and by the Kings Council) and by them prepared for the Lords (if need were) but never by the Commons.

All Ordinances made in Parliament (*in Pleno Parlamento*) were made by the Lords and Commons) all Ordinances made *per commune Concilium*, were made by the Lords and Commons. But of this more in the second Book.

I will onely add this; whatsoever began by the Commons was anciently termed (*Petition*) for they had no power to ordain: And whatsoever began with the Lords, (*An Ordinance.*)

Petitions were exhibited by private persons to the King and his Council, or to the Commons.

*Ordinan<sup>ce</sup>*

**O**rdinances were either by the Lords alone about some particular business; or an Act of the Lords and Commons, and consented unto by the King, but not to have continuance for ever.

*Actus Parliamenti*, was an Act made by the Lords and Commons, (*statutum*) when the King had consented to the Act.

*By what warrant the Writs of Summons were made.*

**I**t doth not appear by the first Record of Summons now extant, *Anno 49 H. 3.* by what Warrant the Lord Chancellor caused the Writ of Summons to be made, the King was then prisoner unto *Mountford*, his sometime Minion.

**B**ut Surely none but the King can summon the Parliament; and this is the Reason that *H. 4.* having taken his Liege Lord, King *Rich: 2.* prisoner, on the 20th. day of *August*, *Anno 23.* did cause the Writs of Summons for the Parliament, wherein he obtained the Crown, to bear date the 19 day of the same moneth, and the warrant to be *per ipsum Regem & consilium*, and himselfe to be summoned by the name of *Henry Duke of Lancaster.*

The Warrant hath been divers, sometimes *per breve de privato sigillo*, but commonly *per ipsum Regem*, or *per ipsum Regem & Consilium*.

If the King hath been absent, and a *Custos* appointed (as the manner is,) the Writ bears the *Teste* by the *Custos*, and the Warrant is *per ipsum Regem, & dominum Custodem, et Consilium*, prout, Anno 3 E:3. *Teste Edwardo Duce Cornubie, &c. Custode Anglia.*

*Per ipsum Regem, et Dominum Custodem, & Consilium*, Anno 20 E. 3. *Consimile*, Anno 9 H. 5. *Teste Johanne Duce Bedford, Custode Anglia.*

*Per ipsum Regem & Consilium.*

Anno 9 H. 6. The King being in Paris, *Teste Humphrido Duce Gloucester, Custode Angl. per breve de privato Consilio.*

But if the King be within the Land, though (within Age) and a Protector appointed him, he alone is *Testis* to the Writ, and Warrant, *per ipsum Regem*, prout Anno 1 H. 6. and sometimes *per ipsum Regem et Consilium, &c.*

But for many Summons, the VVarrant is not recorded.

## *The form of the Warrant.*

**I** A M E S by the grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c. To our Right Trusty, and wel-beloved Chancellour, *Thomas Egerton*, Chancellour of England, greeting. Whereas we by our Councell for certain great and urgent causes concerning Us, the good Estate and Common wealth of this our Realm, and of the Church of *England*, and for the good order and continuance of the same; have appointed and ordained a *Parliament* to be holden at our City of *Westminster*, the first day of *April* next coming; In which case divers and sundry Writs are to be directed forth under our great Seal of *England*, as well for the Prelates, Bishops, and Nobility of this our Realm, as also for the Election of Knights, Citizens, and Burgeses of the several Counties, Cities, and Borough Towns of the same to be present at the said *Parliament*, at the day and place aforesaid.

Wherefore We will and command you forthwith upon the Receipt hereof, and by Warrant of the same, to cause such and so many

many Writs to be made and sealed under Our great Seal for the accomplishment of the same, as in like Cases hath been heretofore used and accustomed: And this Bill signed with Our hand, shall be as well unto you, as to every such Clark and Clarks, as shall make, or passe the same, a sufficient Warrant in that behalf. Given, &c.

The Warrant is generall, and directs not the Lord Chancellor unto whom he shall direct the Writs of Summons, nor to omit any that were summoned the Parliament before. And yet it is apparent that many Lords (though living) have been omitted, and that the Father who hath been often summoned in his life time, being dead, his son nor none of his posterity have ever been after summoned.

This gives more occasion to shew what right the Nobility have had to be summoned, and upon what occasions they have been omitted.

First for their Right, the King at this day inserts into the patent of creation of a Baron, that he should be summoned to Parliament, so that the question doth rest onely upon those Barons who had no patent of Creation; for the Earles had Charters, and  
no

no doubt was ever made of them. The doubt ariseth out of this, that divers Lords have been called by Writs, the onely thing left us recorded to know them; for aunciently they had no Patents, and yet their sons and posterity wholly omitted, for it may seem it rests meerly in the Kings will to call them again, or wholly omit them, and that they had no right to be called by their Creation.

To satisfy this, let us consider of the creation of Earls (of whom there was no doubt) and of the creation of Barons.

It cannot be denyed, but that Earls were ever created by an actual Ceremony, and that aunciently they had no Charter.

*Mandevile* Earl of *Essex* being the first that had any (as the common opinion is) there being none extant before his time; now the question is, whither the honour passe by creation without the Charter, or no, as I suppose it did, and that the Charter was to convey the Jurisdiction aunciently, and of latter times, the third penny of the County, rather then for the honour; and for this cause happily divers Earls used to renew their Charters at the change of the Prince, not to renew their honour, but to confirm the grant of the Jurisdiction, or third penny of the County from the Crown, where

wherefore I may affirm that the ceremony of Investiture, &c. created the Earl, and the Charter of the Earldom.

*Earls that renewed their Charters:*

An. 1137

**M**Andebile Earl of *Essex* created by *K. Stephen*; his Charter was granted him again by *Maud* the Empress, and a Charter was granted him again by her sonne *Hen. 2.*

*Milo* Earl of *Hereford* created by *Maud* the Empresse, and his Charter was granted to him again by her son King *H. 2.*

These are extant with *Sir Robert Cotton*, Anno 1626. And if Charters had been usually enrolled in those times, when the Jurisdiction of the County was granted unto the Earl, We should have had many more presidents.

Of the creation of Barons, I know there are divers opinions, viz.

1. *That they are Barons by Creation.*
2. *Barons by Writ.*
3. *Barons by Tenure.*

The two latter are erroneous.

**Touching**



**T**ouching Barons by creation, I do here intend those onely who have had no patent ( as now they have ) but were anciently created by an actuall Ceremony , even as Earls anciently were.

No ancient Record can be produced that any degree of honour did passe ( no not among the barbarous Nations ) without actual ceremony. Knighthood did ever require it, which is the lowest. And therefore I cannot conceive, but that the ancient Barons were created first before they had their Writs, and then having once been called by VVrit, they had as good right for them and their posterity to be summoned ever after as the Earls had, so they kept their land.

To prove that Barons were created by ceremony , examine the Patents of 11 R. 2. to the Lord *John Beauchamp of Holt*, which some Antiquaries affirme to be the first Patent of the creation of a Baron , the words are ( *Ipsum Johannem in unum Parium & Baronum Regni nostri Anglia prefecimus*) volentes quod idem Johannes, & hered. masculi de corpore suo exeuntes statum Baronis obtineant, ac domini de Beauchamp & Barones de Kidermaster nuncupentur : In cuius rei testimonium, &c.

Teste

wherefore I may affirm that the ceremony of Investiture, &c. created the Earl, and the Charter of the Earldom.

*Earls that renewed their Charters:*

An. 1137

**M**Andebile Earl of Essex created by K. Stephen; his Charter was granted him again by *Maud* the Empress, and a Charter was granted him again by her sonne Hen. 2.

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Teste

*Teste Rege apud VVestminst. 10 die Octob.*  
It is strange to me that any should think that  
this Patent should create the Lord *Beauchamp* a Baron.

It wants the very words of Creation, it  
saith (*Præfecimus*) we have created, and not  
*per præsentis præfecimus*, we do now create  
him: so that out of all doubt he was created  
before, and the King by this Patent onely li-  
mitted the honour to his heirs Males as *H. 6.*  
did in the first *VVrit* of Summons to *Brom-*  
*flet*, Baron of *Vessey*, *Anno 27 H. 6. Clause.*

But if *Beauchamp* were created before this  
Patent, the question is how he was created.  
I answer, neither by Patent nor by *VVrit*:  
For the Patent is dated the 10<sup>th</sup> of *October*,  
and created him not: And his first *Writ* was  
in *December* following, which is a good con-  
clusion in my opinion, that he was created a  
Baron by Investiture of Robes before he had  
either patent or *Writ*.

*Barons by Writ.*

**H**ow can it be imagined that a *Writ* can  
create a Baron. The ground alledged  
for it is the great slaughter of the Rebellious  
Barons at the battle of *Evesham*, *Anno 49*  
*H. 3.* And that therefore others were sud-  
denly

dearly created by Writ to convict the remainder of those Rebels ; the foundation of this error is built upon a false ground. For that Parliament of 49 *H. 3.* was summoned before the battle of *Evesham* ;

To consider the deliverance of the Kings eldest son who was then a prisoner : and *Mountford* Earl of *Leicester* ( chief Rebell ) had his summons also , and divers others who were slain at that Battail on his part.

If the Writ without Investiture of Robes did enoble the party, then were all the Judges , the Kings Sergeants at Law, divers Deans , and Arch-Deacons ( being Treasurers, or Keepers of the Privy Seal ) or otherwise of the Kings Council, enobled in divers Parliaments of *Edw. 1.* almost in all Parliaments of *Edw. 2.* and many of *Edw. 3.* For they had then one and the self-same Writ as the Earls and Barons had. The Kings two Escheators have had the same Writ *Annis 12. & 14 Edw. 2.* I grant that divers have been called by Writ, and had the same Writ the Barons had , yea, and were ranked in the Close Rolls ( by the Chancery Clerk ) above divers ancient Barons, and afterwards omitted : But I deny that such were Barons, they were but *Peers* : For such men anciently

ently also summoned to Parliament, amongst the rest, I will cite one, (*viz.*) *Monnthermer*, who having married the Widow of the Earl of *Gloucester*, and having a great part of the Earldom as her joynture, was summoned as an Earl during the minority of her son by *Ed. 1.* And when the son came to Age, *Monnthermer* was summoned as a Baron, but his son and posterity omitted.

*It may be objected, how these Peers could be discerned from the Barons, their Writs being all one?*

I answer, by their manner of appearance; for the Barons appeared in their Robes, such as they had at their creation; the Peers did not, for they had none (or such as were far different from the Barons Robes,) Surely no, for it had been a disgrace to him afterwards to appear in Barons Robes, when he came but as Baron. It plainly appears that he was summoned *Ratione tenure tantum & non nobilitatis* Ergo, and so had no Robes.

## Of Peers.

**A**S touching the opinion that the Father being summoned, his person was enobled; and if his Son be also summoned, his blood is enobled: I have observed, that 3. discents have been summoned, and yet were no Barons (*viz.*) *Anno 49 H. 3.*

*Rados de Camois* was summoned, and ranked in the Roll above all Barons, and *Ralph Camois* his son was summoned, *Ar. 7 E 2.* And yet *7 R. 2. Claus. membr. 32 dorso. Tho: Camois* the Grand-child being chosen one of the Knights for *Surrey*, was discharged by the Kings Writ, *Quia ipse, & quam plures Antecessores sui Banneretti fuerint.* And *K. Richard* the second summoned him to that very Parliament of *Anno 7.* and he was summoned ever after during his life.

I doubt not but the Heralds will affirme that *Ralph Camois* the Father and and Son, yea, and this *Thomas Camois* were Barons: But how will they then answer the Record of *7 R. 2.* who saith they were *Banneretts*, a Title given to the Peers of that age, as that of *Milites* was in the time of *E. 1.* And Tenants in *Capite* in the time of King *John* (as shall be shewed hereafter) if they can prove

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that

that *Thomas Camoys* enjoyed the precedency of place which his Grandfather had; *Anno 49 H. 3.* I am satisfied; till then I conceive; leaving others to their own better judgements, that *Camoys* was called to Parliament; discent, yet not being created a Baron by Investiture of Robes, but onely called by Writ; he was but called a Barons Peer, and no Baron. And it seems to me that those Claims of priviledge not to be impannelled of a Jury which occur in our Year-books, were made by peers, and not by Barons; For the tryall was by Record, whether summoned or not, and not by the Heralds for their Creation: For it is impossible but a Sheriffe of a County should know a Baron of the same Shire by creation (if he were the first;) his appearance in the *Parliament* in Robes, and the Hatchments at his Fathers Funerall, if it descended unto him, would be so notorious, as the Sheriffe of the same Shire could not so mistake, as to impannell him of a Jury, and the Bailiffe dwelling in the same, hindered to warn him to appear.

I know that the word *Peers* in two *Parliaments* of 15 E. 2. did signifie the Lords Spirituall, and Temporall, and all that had voyce in *Parliament* according to the signification

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fication of the word. And in the 4 *E. 3.* all that were to be tryed by *Peers* 9. the Temporall Lords onely : but in all the ancient Statutes (penned by the Judges, & the Kings Serjeants) the Earls and Barons are so named, or else *Magnates*. And this word *Peers* is not found in any of them, save in those of 15 *E. 2.* Touching the banishment of the *Spencers*, whether did any of those Lords who were impannelled of a Jury, challenge the name or title of a Baron, *Vide Brooks Abridgement. Tit. Challenge, N<sup>o</sup>. 18.*

The Cause alledged is, for that he was Banneret and Lord of *Parliament*, and had place there, and so ought not to be of a Jury.

And may it not be that he who was summoned to the *Parliament* as a Baron, during his life, also had voyce in *Parliament*, why not priviledged out of a *Parliament*, why may not so much be granted unto him as to a Banneret, not to be chosen Knight of the Shire? the Banneret might be summoned to the upper House, and therefore (in my opinion) ought not to serve in the lower House? why not the other priviledge upon the same reason? The very tryall upon such *Challenges* was whether summoned or not.

Not whether a Baron, or no Baron, which satisfies me, that they were no Barons, but Peers, and being summoned, had the priviledges of Barons, both for that, and to be tryed by Peers, but were not so honourable.

Here may be a doubt, whether the Barons and Peers took place in the *Parliament-House*, as they were ranked in the Lists of Summons, then did *Richardus de Camoys*, being but a *Peer*, take place, *Anno 49 H. 3.* above all *Barons*: and so *Thomas Camoys* the Grandchild was ranked, *Anno 17 R. 2.* and after for divers *Parliaments* above all *Barons*. If you peruse those ancient Summons, you shall not finde any one of them ranked aright.

*Vide Anno 12 E. 3.* where *Thomas* Earl of *Norfolke*, Marshall of *England*, and the Kings Uncle, and the Earl of *Gloincester*, and *Angus*, are placed in the middle of the *Barons*, and the Lord *Stafford*, an ancient *Baron* ranked lowest save one.

*Vide Anno 12 Ed. 3.* where *Eustachius de Hatch*, *John de Havering*, and *Henry de Pinkney* and others are ranked before *Henry* Earl of *Lancasters* son and the Kings Nephew. *Vide 1 H. 6.* where the Earl Marshall, the Earl of *March*, the Duke of *Exon*, and the

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and the Earl Warren, are ranked after divers Barons. Anno 3 H. 6. Humphrey Duke of Gloucester, the Kings Uncle, and the Earl Marshall, are ranked together lowest of the Barons, save one: *Vide Consimil. Annis 13 E. 3. 20 H. 6.*

Neither shall you find the Lords placed alike in any two Summons: And the said Thomas de Camoys in divers Parliaments before 17 R. 2. And in all Parliaments after 3 H. 4. was ranked sometimes the lowest, and sometimes neer the lowest of all the Lords.

To prove that Peers were summoned as well as Earls, and Barons, *Vide* the ancient Manuscript of *Modus tenendi Parliamentum* Cap. de Laicis summoneri debent omnes & singuli Comites, Barones & eorum pares.

*Et vide Chartam Iohannis R. in Matthew Paris, pag. 247.* Where after the summons of the Arch-bishops, Bishops, Earls and Barons, *Majores Item summoneri faciemus, &c. Omnes alios qui in Capite tenent de nobis, &c.* It sets not down the quantity of their tenure, but it is expressed in that other ancient Manuscript to be 13 Knights fees for a Barons Peer, and 20 Knights fees for an Earls Peer.

*Et vide Rotul. Clans. Anno 27 E. 3. af-*

ter the Writs of the Earls, *Consimiles littere diriguntur Baronibus & Militibus subscriptis, &c.* Vide, a List of the names of such as were beheaded with the Earl of Lancaster at Boroughbridge, Anno 15 E. 2. where many who were formerly summoned to Parliament as Lords are named Bannerets, prout Sir Henry Tyes, Sir John Gifford, Sir Bartholomew de Badlesmere, Sir John Mowbray, &c.

Vide Etiam, Summons to Thomas de Bradeston, An. Ed. 3. who was a Banneret, as appears by the Patent, An. E. 3. And Ralphes Camoys the Father, and son were summoned, Annis H. 3. E. 2. and E. 3. And yet An. 7 R. 2. Clause 32. the Record saith, that Thomas Camoys, and very many of his Ancestors were Bannerets, and therefore he was exempted from being Knight of the Shire, happily for that the King might summon him to Parliament, as he did his Ancestor Ralph Camoys

Vide Etiam, the Parliament Roll, Anno 18 Ed. 3. n<sup>o</sup>. 35. The Cause of Summons was declared in the presence of the King, and divers Lords there named (*& autres Barones & Banerettes Chivalers de Comites*) Citizens & Burgeijs summons au dit Parliament.

E Anno 46 E. 3. n. 7. The Parliament Roll, the Dukes, Earls, Barons, and Bannerets,

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rets, and in divers Parliament Rolls of *E. 3.* often occurs by the Prelats, Earls, Barons, and other Grandees.

*Anno 30 E. 3. n. 8.* the Earls and Barons being in Parliament, have granted for themselves, and for the Peers of the Land which hold by Barony the tenth Fleece, &c. In this Parliament the Commons granted a Subsidie by themselves, and the Lords granted another by themselves, amongst whom were reckoned their Peers. *Anno 17 E. 3. n. 6.* *Per les Comites Barons, & autres Nobles,* these *autres Grandes*, and *autres Nobles*, could be none other then the Peers, all other degrees of honour being named.

These reasons give me satisfaction that Peers were summoned in the times of *H. 3. E. 1. E. 2. E. 3. and R. 2. &c.* as well as Barons, and they and their posterity omitted *ad Libitum Regis*; and divers painfull Antiquaries observing this Omission, and not knowing that they were but peers, have been firm of opinion that the Writ did create a Baron, but it was (*ad libitum Regis*) to call his sonne, or to omit his whole posterity.

## Of Barons by Tenure.

**T**ouching the third kind of Barons by Tenure, it is erroneous as that by Writ.

I have perused all the Precedents that are alleadged for it, and they are of the Lands conveyed by the Kings License to the Heir-Male, or the second sonne of the Ancestor that was created by Writ, ( the same may be said of an Earldome also ) For the Lord *Matrivers* being Heire Male, and having the Castle of *Arundel* by Intayle, was adjudged in Parliament, *Anno 11 H. 6.* to be Earl of *Arundel* by force of the Entayl.

Amongst the other Presidents may be added one of our time, of *Edward Nevill* Heir Male to the Lord *Abergavenny*, having the Land entailed on him, and the King summoning him by Writ, his Lordship took his ancient place: For the Ancestors being created by the Ceremony of Investiture, the same needs not to be renewed in any of his posterity, there the Writ alone is sufficient; for such honour is inheritable, and hath been disposed of with the Land, which is a good proof of the Barons right to come to Parl. (whereof more hereafter) but not that Land made honour, or carryed the honour; For they

they can alledge no president of a meer stranger in blood, and purchaser of the Lands of a Barony, though with the Kings licence, (otherwise the sale of no Land held in *Capite*, as all Baronies are, can be good against the King) have by vertue of the Land been called to Parliament, onely one comes near it.

That is of the Barony of *Latimer*, of *Danby*, whose Daughter and Heir being married unto *John Lord Nevill*, and he called by *VVrit* in her Right, and had issue by her *John*, and *Elizabeth*; *John* the son dyed without issue, having first sould the Lordship of *Danby*, unto *George Nevill* the son of *Ralph*, the son of the said *John* the Father, by his first Wife; And afterwards the Heir generall making no claim unto the honor, the said *George Nevill* was summoned by *H. 6.* to the Parliament.

But *Brooke Lord Willoughbye* the Heir general petitioned *H. 7.* for the said Honor, and in my opinion, (had it not been for his Ancestors non claim, together with *Nevills* possession, *iiij.* descents) he shewed the best right for it.

But if you please peruse to the Inquisitions *post mortem*, remaining in the *Tower*, you shall find very much Land held *per Baroniam*,  
even

even in ancient times in the hands of private Men, who were not then reputed Barons.

So that I am satisfied that no Barons have been summoned to *Parliament*, *Ratione tenura*) onely Peers have.

It resteth to speak of the Omissions in the Summoners (*viz.*) of the temporal Lords of Parliament, not of the Clergy (who never lost their Right) nor of the Peeres who had none but for life, save *ad Libitum Regis*.

If the Bishop were dead, and the Sea void, yet summons were directed, (*Custodi spiritualitatis Archiepatus Cantuariensis, sede vacante, &c.* An. 7. E. 3. & *alibi*).

If the Bishop were beyond the Seas, yet Summons were directed to him, *pro ut Anno xiiij. E. 3. R. Dunelm. Episcopo vel ejus vicario generali, ipso Episcopo in Remotis agente, & alibi*

The Reason is, they are *Premunire Clericum, &c.*

So that Bishops dead or alive, are ever summoned, *Ratione Episcopalis dignitatis & tenura*, And can the same Writ be denied unto Earles and Barons? surely no, the Parliament is (*Commune Consilium*) the whole Land hath interest therein, the Commons appear there by their generall Procurators, (the



(the Knights, Citizens, and Burgesſes,) and the Lords in perſon, or by their particular Procurators, and the preſence of the Lords and Commons is ſo neceſſary, that no Law can be made or revoked without them.

If a Peer was ſummoned, he was not omitted during his life, As appears by all ſummons, for the King would not diſhonor him whom he had honoured.

The ſame Right which a Peer had for life a Baron had of Inheritance, the very Creation by Inveſtiture of Roabs made it Inheritable, even to the Heirs general; otherwiſe what needeth *Richard 2. An. 11.* to limit by his Letters Patents before the firſt VVrit of ſummons the Baronage of *Kidermiſter* to the Heirs Males of the Lord *Beuchamp* of *Holt*, who was created by Inveſtiture of Roabs (as I have ſhewed before) or *H. 6. An. 27.* to limit by the firſt Writ of ſummons the Baronage of *Veſſey*, unto the Heirs Males of the Lord *Bromſſlet*.

I do not affirm that the Husband or ſon of an Heir Female ought to be called to Parliament, but they have uſually been called to Parliament; And if ſuch Husband after that he hath iſſue Male, or ſuch ſon after the Barony is deſcended on him be called, before they have no right they took place  
accor-

according to the antiquity of their Ancestors, and were not new created, which shewes the honor is Inheritable.

Nay if the chief Seat had been conveyed to the Heir Male, and he summoned to Parliament, he took place according to the Antiquity of the Barony.

And as the Barons honor is Inheritable, so their coming to Parliament hath ever been reckoned an essential point of Inheritable honor, as given them by the King at their first Creation (though not mentioned as now in their late Charters) And to deny that unto any one, that is due unto them all, is to dishonour him whom the Majesty of a King hath formerly honoured, whereof our Kings have ever been very Religious; Witness the president of *Roger de Quincye*, second Son to *Sayer* Earl of *Winchester*, whom *H. 3.* summoned to the Parliament, supposing that *Robert* his Elder Brother (then in the holy Land) had been dead, and would not afterwards displace him, when his eldest brother returned, and petitioned for his right, because he had been lawfully summoned to Parliament, and there, and in other places had been void, whereby (saith the Precedent) the title of honour was settled, as an inheritance in him; it was unjust, but yet to preserve

serve the honour which the King had given.

There is another pleasing Precedent of *Mounthermer*, whom *E.1.* called to Parliament, as Earl of *Gloucester*, for that he had married the Widdow, and had a great part of the Land, and when *Gilbert* the Heir came to Age, and petitioned for his Right, *Ed.2.* granted it, yet summoned *Mounthermer* ever after as a Baron; so unwilling the King was to dishonour him. Out of these precedents and my observation of all the summons in general which I have carefully perused, it appears plainly to me that the Lords have a double Right to be summoned to the Parliament, one gotten by long continuance and use, and another given by the King with their honour at their creation; (neither can I find) having made diligent search that any Baron hath been omitted, if he were of full age, stood (*Reatus in Curia*) and were within the Land, unlesse he had so diminished his Revenues, as that he could not maintain the state of his honour, whereof there are some few unpleasing precedents, but such cannot be produced of any Earl, for at his creation the King gave him for his Maintenance, the third penny of the County which could not be aliened.

To proceed in the Commissions.

**E**Arles and Barons have been usually omitted, if they have been out of the Land, *prout*.

An. 10. E. 3. 9th. Summons were directed to (*viz.*)

*Robert de Ufford, Com. Suff.*

*Gilberto de Umfrevil*

*Com. de Angus.*

*Ranulpho de Dacre.*

*Bartho. de Burghersh.*

*Joh. de Seagrave.*

*Egideo de Badlesmere.*

*Rado de Nevil.*

*Joh. de Tiptoft.*

*Rico. Talbott.*

*Henrico de Percy.*

*Rado de Stafford.*

*Thomæ de Berkeley.*

*Antonio de Lucey.*

*Es Memorandum quod brevia istis Magnatibus immediate præscriptis directæ essent.*

*ad*

ad Parliamentum predictum remissa fuerunt Cancellar. Regis, pro eo quod quidam ex iis in partibus Scotia, & quidam ex eis in partibus transmarinis in obsequio Regis existant ad nullanda; Anno 46. E. 3. and in divers years of H. 5. Few Earls and Barons were summoned, the King then being in his French Warres, And such omission was thought to be no disparagement to their honour.

But now since the opinion, that Omission to be summoned did lose their Right hath been broached by the not discerning of Peers from Barons, every Lord is carefull to be summoned, though he know he cannot appear, being beyond the Seas. As when the Lord Mountjoye was Deputy in Ireland, Anno 43. Eliz. he had his Writ, and sent his Proxie.

Others have been omitted because they did not stand *Rectus in Curia*, either their title was *Litigious*, as was the Earl of Arundells, Anno 11. H. 6. And the late Lord of Abergavenny; or they were restrained of their liberty, being in the Kings displeasure, as was the Earl of Northumberland, Anno xviii. Jacobi, For then the VVrit of summons is an Enlargement by Law as was resolved by the Judges,

But I do not find any ancient precedent that any had their Writs denyed them, for that they were in the Kings displeasure onely.

For *Anno 15. E. 3.* the King was highly displeased with the Arch Bishop of *Canterbury*, yet he had his VVrit, and came to Parliament, and humbled himself unto the King, desiring to be tryed by his Peers.

It is true this Arch Bishop was at the first denyed his Entrance into the Parliament House, yet at the Intercession of the Lords, he was admitted; *Vide plus de Antiquitate Ecclesia Britannia; & Goodwin in vita sancti Archiepiscopi.*

*Anno 5. H. 4.* The Earl of *Northumberland* was summoned to the Parliament, to be held at *Coventry*, 28. *December*, Notwithstanding he was suspected to be privy to the treason of *Hottspur* his son.

This Parliament was prorogued *Cra. Hill.* at *Westminster*, and the prorogations being then by new Writs, the Earl of *Northumberland* had none, yet he came to Parliament, exhibited his petition, wherein he acknowledged that he had done against his Allegiance, and namely for gathering of men and giving of Liveries against the statute, was tryed by his Peers, who adjudged his action

to be neither Felony, nor Treason, but only a trespassse finable to the King, which the King pardoned. Now of late they which are in the Kings displeasure, have had their summons, but with a Letter from the Lord Chancellor, or Lord Keeper (not to come out but) to send a Proxie.

But in the Parliament of the 6. of February, Anno Caroli Rs. the Earl of Bristol being denyed his VVrit, petitioned the Parliament for it, then he had his Writ without any intercession of the Parliament Lords: But withall a Letter from the Lord Keeper signifying his Majesties pleasure, that he forbear to come, and send his Proxy; whereupon the Earl petitions the Parliament again, shewing that that letter could not discharge him from coming, the VVrit commanding him to come upon his Allegiance: but this point was not then decided, for the Earl was presently sent for as a *Delinquent*, and charged with Treason; *Omission. ratione Minoritatis*, there be many presidents for it as of young *Gilbert de Clare*, Earl of Gloucester, in the last year of E. I. But the King hath sent his Writ of Summons unto such, before they were fully xxi. being of years of discretion, as the Lord *de la Ware*, Anno 20. *7a. robi.*

*Anno 3. H. 6. John Lord Roos*, being then under age, is named to be present in Parliament amongst other other Lords, *n<sup>o</sup> 10.* but his summons are not entred.

*Anno 11. H. 6.* All the Lords are sworn to the statute of Retainers, made *Anno 8 H. 6.* and there it appears that the Duke of *Norfolke*, and the Earl of *Devonshire* (though under age) were in Parliament in their places, and did take the said Oath, *n<sup>o</sup> 13.* yet neither of their summons were entered.

As the King hath not used to omit any Lord that hath been within the Land (*Rectus in Curia*) and of full age, so none have used to come to Parliament, untill he had received his VVrit of summons: But in such case he may send to the Lord Chancellour for his VVrit, as the Earl *Marshall* delivered his opinion in the case between *Nevill*, and *Fane*, *Anno Eliz.* The reason may be for that the Lord Chancellors warrants are general, *Vide* the Journall book, *Anno xxixth. of Elizabeth*, the Parliament began the 24th. of *October*, and the Earl of *Essex* came not, for that he received not his Writ, (through the negligence of the Messenger, saith the Journal, until the xvij. of *November*, His Lordship was then sick, and appeared not until the 11th. of *January* following.

And



And in the Parliament of the xvij. *Jacobi*, the old Earl of *Hertford* dyed, and his Grandchild and Heir came not to the Parliament, because he had not received his *VVrit*.

*To the great Councell.*

**A**lthough the Kings of *England* have not omitted the Earls and Barons in the Summons of Parliament, unlesse for the causes aforesaid, yet they have usually omitted divers of them in the Summons to the great Councell, prout in the Summons, *Anno* 9. E. 3. xxij. *February*, the King summoned but five Earls, and Eleven Barons.

*Anno* 15. E. 3. 12. *January*, there were summoned but xxvii. of all sorts.

*Anno* 16. E. 3. 12. *September*, & eodem *Anno*, 20. *November*, were summoned but a very few. And 21. E. 3. there were summoned xxij. of all sorts.

*Anno* 45. E. 3. there were summoned but xiiij. Earls and Barons, and so in divers years of E. 3.

Neither did E. 2. summon them all.

After E. 3. the summons to the great council were under the privy seal, the reason may be of this omission (for that the same

not being (*Commune Consilium*) as the Parliament is, The Chancellour was appointed whom he should summon, & had not a general warrant, *prout An. 15 E. 3. the 12 Junij*, the Writs being sealed of that date, others were made, and this Note under-written, *viz. Mandamus quod ipsa brevia consignata fuerunt, 3. die Julij.*

Vide with Sir Robert Cottons Warrants for Summons to the great Councel, *An. 26. & 28 H. 6.* on this manner. First, the form of the Writ, then the names of such Lords who were to be summoned, and underneath thus.

*Rex de Avisamento Consilij voluit & Mandavit custodi privati sigilli sui quod literas separales sub eodem sigillo faceret dominis predictis dirigendas in forma predicta.*

Signed by the Clerk *Tho: Kent.*

**T**here rests yet one doubt to be satisfied (*viz.*) the Kings Warrant to the Chancellor being generall, how came it to passe that the Summons of Peers were omitted.

I answer, the words of the Warrant are to make such Writs as are usuall, and the use was to omit the summons of Peers without special direction from the King.

*Of Omission of summoning of the Husband of an Heire Female.*

**W**here the Barony descends unto an Heir Female, the Husband of such an Heir hath been omitted untill he hath had Issue Male by her, and be admitted upon his Petition of Grace unto the King, *quia*, the use hath been so; yet being admitted and summoned, he taketh place according to the antiquity of that Barony. I speak of Barons by Creation of Investiture and Writ onely, without any Patent. And this shews plainly that a Baron so created and summoned, his honour is inheritable.

It may be objected, That some Baronies descended unto an Heir Female, and her Husband and posterity ever after omitted. And some Baronies have descended unto two Sisters or more, and the husband of the elder sister wholly omitted, and the younger husband summoned 1<sup>o</sup> such honour is not inheritable but during the life of the Issue male.

I answ. This may happen upon divers occasions: for 1<sup>o</sup> besides the descent of honour, a certain number of Knights Fees ought to descend

descend also for the maintenance thereof.

Secondly, the Husband cannot be summoned *de jure*, untill he hath Issue Male, and petitioned for it.

Thirdly, If the Husband neglect his Petition, the Issue Male is to make his Claim by Petition to the King.

If any of these fail, the Omission is just; and yet the honour is inheritable to the heir female, otherwise how could Sir Humphrey Bowcher, who married the younger daughter of the Lord Cromwell be admitted unto the ancient place of that Barony.

*The forme of the severall Writs of Summons at this day:*

Anno 18 Jacobi.

**J**acobus Dei Gratia, Anglie, Scotia, Francia, & Hibernia Rex, fidei Defensor, &c. Praclarissimo filio nostro Carolo, natu secund. modo Unico & Primogenito, Principi Wallia, Duci Cornubia & Ebor. & Comiti Cestria salutem. quia de Avisamento & assensu consilij nostri pro quibusd. Arduis Negotiis, Nos, statam, defensionem Regni nostri Anglia & Ecclesie Anglicana concernent. quoddam  
Parli-

Parliamentum nostram apud civitatem nostram Westminster sexto decimo die Januarij prox. futur. teneri ordinamus, & ibidem cum vobis ac cum Prelatis, Magnatibus, & Proceribus dict. Regni nostri colloq. habere & tractatum: vobis in fide & legiantia quibus nobis tenemini firmiter Injundo Mandamus, quod consideratis dictor. negotiorum arduitate, & periculis imminentib. cessante excusatione quacunque dict. die et loco personaliter interitis nobisc. et cum praelatis, Magnatibus, et proceribus pradiet. super dictis negotiis tractat. vestrumq; consil. impensur, Et hoc sicut nos et honorem nostrum, ac salutem et defensionem Regni nostri et Ecclesie pradiet. expeditionemq; dictor. negotior. diligitis nullatenus omittatis. T: meipso apud Westminst. 13 die Novemb. Anno Regni nostri Anglia, Francia, et Hibernia Decimo octavo, et Scotia quinquagesimo quarto.

Anno 14 Jac. &c. Jacob. dei gratia Angl. &c. Fracharissimo Consanguineo suo Georgio Marchioni Bucking. magn. Admiral. Anglia salutem. Quia de Avisamento, &c.

Jacobus dei gratia, &c. Charissimo Consanguineo Carolo Comiti Nottingham. salutem, quia de avisamento, &c.

Jacob. dei gratia, pradiet. et fidei nostro Lionello Cranfield Chr. Summo. Thesaurar.

nostro Anglia: cum nuper de avisamento, et assensu consilij nostri, pro quibusd. arduis et urgentib. Negotijs, nos, statum et defensionem Regni nostri Angl. et Ecclesia Anglican. concernent. praesens parliamen. nostrum apud civitatem nostram Westminst. sexto decimo die Januarij Ultimo praterito teneri Ordinavim; et ibid. cum Pralatis, Magnatib. et procerib. dict. Regni nostri colloqu. haber. et tractat. vol. sub fide & legiantia quibus nobis tenemini firmiter Injungendo Mandamus, quod consideratis dictor. negotior. Arduitate et periculis imminetibus. Cessante excusatione quacumq. quarto decimo die instantis mensis Novem. ad praesens Parl. nostrum personaliter interitis, &c.

R. prae dilect. et fidei nost. Edwardo Moun-  
tague de Broughton Chr. salutem consimile.

Jacob. dei grat. &c. Henrico Grey de Groby  
Chr. salutem. quia de Avisamento et assensu,  
&c. Anno 18 Jacobi.

R. prae dilect. et fidei suo Francisco Russell  
Bar. de le Thornhough Chr. salutem, An. 20  
Jacobi.

Jacob. di gratia, &c. Reverendissimo in  
Christo patri Tobiae Archiepisc. Eborum An-  
gliae Primat. et Metropolitano salut. quia de  
Avisamento et assensu consilij nostri pro qui-  
busd. arduis et urgentibus negotijs, nos, sta-  
tum, et defensionem Regni nostri Anglia et  
Ecclesia

*Ecclesia Anglicana concernent. quoddam  
Parliamentum nostrum apud Civitatem nostr.  
&c.*

*Jacob. dei gratia, &c. Reverendissimo in  
Christo patri Jo: Episc. Sarum salutem, &c.  
cum nuper de Avisamento, &c.*

**The form of the ancient Writ for  
the Election of the Knights,  
Citizens & Burgeslies.**

**R**Ex Vicecomiti Eborum salutem. Quia  
propter quadam Magn. et Arana Nego-  
tia nos et ducatum nostrum Aquitania ac alias  
terras nostras in partibus transmarinis pro  
quibus ad easdem partes nuper solemnes Nun-  
cios nostros destinaverimus, contingetiaq; in  
ultimo parlam. nostro a quibus certis causis  
terminari non potuerint, Parliament. nostrum  
apud Westminst. Die Lune in Crest. quin-  
dena Pasche prox. futur. tenere, et cum præ-  
latis Magnatib. et procerib dicti nest. Regni  
ordinavimus habere colloq; et tractat. tibi  
precipimus, firmiter Injungentes quod ac dicto  
Com. duos Milites et ac qualib. civitate Com.  
illius duos cives, et de qualibet Burgo, duos  
Burgenses, de discretioribus et ad laborandam  
potentiorib. eligi, et eos ad dictum diem et locum  
venire

venire faciatis. Ita quod Milites plenam et sufficientem potestatem per se et comunitatem, comitatus, predicti, et dicti Cives et Burghenses pro se et comunitatem, civitatem, et Burghorum divisim, ab ipsis habeant, ad faciendum et consentiendum, iis que tunc de communi consilio (favente deo) ordinari contigerint super negotiis ante dictis. Ita quod pro defectu huiusmodi potestatis dicta negotia inefficacia non remaneant quovis modo, et Habas ibidem nomina predictorum Militum Civium, et Burghensium, et hoc breve, et hoc sicut nos et honorem nostrum et tranquillitatem et quietem dicti Regni diligitis, nullatenus omittatis, &c. T. Anno 5 E. 3. 17 Feb. per ipsum Regem.

I have recited this Writ at large, as it may appear, that the Writ for the Commons was sometimes speciall, declaring the cause of Summons, as well as the summons to the Lords, therein the Writs did agree; but the Commons had not any power of themselves, but from the County, City, or Borough that sent them.

The like Writ was sent, *Constabulario Dover et custodi quinque Portuum* for the election of two Barons out of every port, &c.

Anno 49 H. 3. A Writ went to every Sheriff to cause two Knights to be chosen out of every County.

And



And other Writs went to each City and Borough Town, not to the Major, or Bayliffe but *Civibus et Burgiensibus*, to send two Citizens, &c.

Another Writ went *Baronibus et probis hominibus quinque portuum*.

It is worth the labour to search when, and upon what occasions the Writs altered.

*Additions to the ancient Writ  
of Summons.*

**A** Nno 14 E. 3. 25 Augusti. The Writ of Election agreed with that of 5 Ed.

3.

But when the Commons gave their answer touching the Subsidie demanded for the Wars, they desired leave to return into the Countrey to confer with their Neighbours, promising their endeavours for the same at the next Parliament: And withall desired that the Writ to the Sheriffs for Election of the Knights might have this Clause, viz.

*Que deux milz valuez Chivalers de Counteez soient Eleuz et Envoiez ad prochain Parliament par la commune, si que nul de eux ne soit Viscount ne autre Minister, n°. 8.*

Which

Which was thus far agreed on, viz.  
*Summons du dit Parliament directz au Vis-  
 counts y deux Chivalers Ceynēt des Espees de  
 Chescun Countie soient esleuz par estre en  
 Mesme le Parl. n°. 22.*

And thereupon the next Writ had this  
 Clause (viz.) *Tibi precipimus quod de disto  
 Comitatu duos Milites gladiis cinctos, &c.*  
 which continues to this day.

Anno 46 E. 3. An Ordinance was made,  
 that neither Lawyers nor Sheriffs should be  
 returned Knights of the Shire, but Knights of  
 the best worth in the County be returned,  
 and chosen in full County, yet the Writ re-  
 ceived an addition touching the Sheriffs on-  
 ly, which continues unto this day, viz.

*Nolumus autem quod tu, nec aliquis alius  
 Vicecomes, &c. Anno 1 H. 4. 25 Aug. the  
 Writ had this Clause, (viz.)*

*Nolumus autem quod tu seu aliquis alius  
 Vice-comes Regni nostri predicti, aut appren-  
 tatus, seu aliquis alius homo ad legem aliquali-  
 ter sit electus, &c.*

Whence it was called (meerly) the Lay-  
 mans Parliament: Anno 7. & 8 H. 4. n°. 139.  
 It was enacted by the Petition of the  
 Commons, that Proclamation be first made  
 in the next County Court after the Sheriffe  
 hath received the Election to be made, &c.

That

That the Election be in full County wherein they shall proceed freely, and indifferently, notwithstanding any prayer or commandment to the contrary.

The names of the Knights chosen whether present or absent, be set down in an Indenture under the seals of all men that did elect them.

And this Clause was added to the Writ, viz. *Et Electionem tuam in pleno Comitatu tuo scām distincte & aperte sub sigillo tuo & sigillis eorum qui electioni illi interfuerint, nobis in Cancellaria nostra ad diem & locum in brevi Contentum certificates indilate,* No: 14.

Anno 11 H. 4. n° 39. At the Petition of the Commons it was enacted; That all Sheriffs that shall make retourn contrary to the Stat. of 7 H. 4. the Knight so chosen shall lose his wages, N° 59. Cap. 1.

Note the Statute doth not say that the Retourn shall be void, and the Sheriffe upon a new Writ proceed to a new Election, as the practice is now with the the Commons.

Anno 1 H. 5. At the Petition of the Commons it was enacted; That none shall be chosen

chosen Knight, Citizen, or Burgeis, but shall be resiant, and shall be chosen by such as are Resiant also, *N<sup>o</sup> 2. Cap. 1.*

*An<sup>o</sup> 8 H. 6.* It is likewise enacted; That none but Resiants shall be chosen by Resiants that can dispend 40 s. *per annum* Freehold.

That the Sheriffe may examine the Freeholders upon Oath, how much he may dispend by the year.

The Justices of Peace shall have power to enquire hereof,

If the Sheriffe be attainted for doing otherwise, he shall forfeit 100 l. and be imprisoned.

And the Knights returned otherwise shall lose their wages. (*Nota*) It doth not say the Election shall be void.

And mention shall be made of this Ordinance in every Writ hereafter, *N<sup>o</sup> 39. Cap. 7. An. 10 H. 6. N<sup>o</sup> 33.* the Statute of 8 H. 6. *cap. 7.* is confirmed, and explained, that the Election shall be by Resiants of 40 s. *per ann* Freehold at the least, *Cap. 2.*

But mention is not made of the Ordinance *An. 8 H. 6.*

*An. 23 H. 6. ca. 15.* The Statute of the 1 H. 5. & 8 of H. 6. are confirmed and enacted, That the Sheriffe when he hath received

ved the Writ shall direct a Precept under his Seal to the Mayor and Bayliffs of Cities and Boroughs.

That the Mayor and Bailiffs retourn the said Precepts executed to the Sheriffs by the Indenture between them and the said Sheriff to be made.

And the Sheriff shall make return of the Writ, and of the said Return of the Mayor, and Bayliffs upon pain contained in the Statute of the 8. of H. 6. Cap. 7. And moreover to pay to every Knight, Citizen, and Burgefs so chosen, and not returned by the Sheriff, 100 l.

And if the Mayor and Bayliffs shall retourn others then are so chosen, they shall forfeit to the King 40 l. and to the party chosen and not retourned 40 l.

*Nota,* It doth not say the Return shall be void.

And every Sheriff shall make due Elections of the Knights in full County between eight and nine in the forenoon without Collusion, and make true Returns upon pain to forfeit 100 l. to the party that will sue for the same. Provided that if the Knights, Citizens, and Burgeffes duely retourned by the Sheriffe be afterwards put out, and another put in his place

place, take it upon him, he shall forfeit to the King 100 *l.* and to the party so put out another 100 *l.* provided it be sued for within 3. Moneths.

(*Nota*) It doth not say there shall be a new Election.

The Knights shall be notable Knights of the same County, or such Esquires or Gentlemen of the same County as are able to be Knights.

No man to be a Knight of the Shire which standeth in the degree of a Yeoman.

This is the best statute for the election of the Commons.

*Who are not to be chosen.*

**A** *N<sup>o</sup> 46. Ed. 3. n<sup>o</sup>. 16.* It was ordained by Parliament, that no Sheriff shall be returned nor accepted for Knights of the Shire, which Ordinance hath been constantly observed ever since; And by the same statute it was ordained also, that no Lawyers who solicited suites for other men, should be returned, or accepted for Knights of the Shires, but the King willeth that Knights, and Serjeants of the best esteem of the County be hereafter returned Knights in the Parliament.

*Anno*

Anno 23. H. 6. cap. 15. It is enacted that none shall be chosen Knight of the Shire; which standeth in the degree of a Yeoman.

*Who are to be exempted (if they please) from serving in the house of Commons*

**K**Nights, Bannerets (which name is sometimes given to the Peers) used not anciently to serve in the house of *Commons* for that the King might and did often summon such to the Parliament, as a Lord, Peer: and so his service was in the upper house.

That they were usually summoned, (it is declared before that they were exempted to serve in the house of *Commons*) appears by the Kings Writ, directed to the Sheriff of Surrey, for a new Election (*in loco Thoma Camoys, Chr. Banneret*) the reason is there set down, *Nos animadvertentes quod hujusmodi Banneretti ante hac Tempora in Milites Comitatus. Ratione alicujus Parliamenti minime consueverunt*, 8. October, Anno 7. R. 2. *Claus. Membrum 32. dorso.*

And R.2. did afterwards summon the said  
Tho: Camoys to Parliament.

The Kings servants have had the same privilege of Exemption.

This appears by the like VVrit for a new Election, in the place of *James Barners*, whom the King commanded to be discharged, *quia est de retinentia Regis, & familiaris & unus Militum camera Regis*, ib. Anno 7. R.2. 28. October.

The Princes his servants, and the Queens servants, might claim the like privileges.

And no doubt but they have had the like privileges, as may be gathered out of another Writ of the same, the 7th. year of R.2. dated the 16. of Octob. for the discharge of *Thomas Morwell*: *Quia est de Retinentia, Charissima Domina & Matris nstr. Johanne Principissa Wallie*, but this was in those ancient times, when men thought it a burthen to come and serve in Parliament: Even divers of the Lords themselves obtained licence to be absent, and not to serve during their lives. *Prout An. 1 E. 4. part 1<sup>o</sup> Membrum 15 Rex concessit H. Bromthel, Domino de Vesley quod ipse durante vita sit exoneratus de veniendo ad Parliament. & Consilia Regis, &c.*  
Consimil



*Consimil. pro Domino Beauchamp, Anno*  
*2. Ed. 4. pat. 2. Membr. 10.*

And the Kings Tenants in ancient demesne ever enjoyed this privilege, *prout Fitzherbert, Tit. Parliamentum no 99. & 101.*

But now they claim no such Exemption, neither do the Kings servants enjoy their ancient privileges therein, being now usually chosen for Knights, and Burgesses, ever since Cardinal *Woolsey* had the great Seal; since which time the Commons enjoyed more privileges then they claimed before.

Yet there are precedents, that if any being first chosen into the House of Commons, become afterwards the Kings servants, during the said Parliament, and summoned by writ to serve in the Upper House, that he ought to be remanded back again to the Commons House, *prout.*

Mr. *Ri. Ouslow* being of the lower House, Anno 5. *Eliz.* he was in the *interim* made the *Queenes* Sollicitor, and by Writ called to serve in the Upper House: The Speaker also dyed in the *interim*, The Commons petitioned for leave to chuse a new Speaker, Mr. *Ouslow* being sent to them by two of the Upper House, I suppose by two of the Attendants, was chosen their Speaker, but

the House was divided in opinion.

*Anno xviii. Eli.* Mr. Serjeant *Jeffrey*, (being chosen Knight for *Suffex*) was, in the interim of a prorogation, made the *Queenes* Serjeant, and called into the Upper House by Writ: resolved the xxvii. of *Febru.* that according to former precedents he ought to serve in the House of Commons.

*Anno xxii. Eli.* the House of Commons being met the xvj. of *January*, (unto which day the Parliament was prorogued) *Sir Robert Bell*, their late Speaker being dead, the Commons petitioned for leave to chuse a new Speaker, and receiving answer for the same in the Upper House: at their return Mr. Treasurer reported that he had seen a Member of their house with the Lords (*viz*) Mr. *Popham* who had served in the beginning of that parliament as Burgesse of *Briston*, and in the interim of the Prorogation was chosen the *Queenes* solicitor, and called by writ to the upper house, & moved that he might be remanded, wch. some thought not needful before he be chosen: (it should seem they knew he was to be chosen their Speaker) yet upon reading of the precedent of Mr. *Ouslow*, *Ann. 8. Eliz.* the said Mr. Treasurer and others were sent up to the Lords to demand Mr. *Popham*: answered, that the Lords had

resolved he should be sent down, the rather because he was a Member of the house of Commons, and they posselt of him before he was solicitor or had any place of attendance in the higher house.

And Mr. *Anderson* the Queens serjeant at Law, and Sir *Gilbert Gerrard* the Queens Attorney general brought him to the house of Commons.

Here I have cited 3 precedents, you may easily see the reason why these were remanded. viz. The Queen had resolved to have them chosen Speakers, and not for that the Commons had any right otherwise to demand them. If *Bell* their Speaker had lived being made Lord chief Baron in the Interim of the prorogation, I doubt whether they would have remanded him or no; If it should hold for a rule that the King cannot summon a Member of the house of Commons unto the upper house, then those Lords who were Burgesses *Ann. 18. Jacobi, &c.* and created Barons in the Interim of the prorogation viz. the Lord *Brook*, and *Cranfield* might have been demanded also; compare those 3 presidents of 7 R. 2. and note *volenti non fit injuria.*

## C H A P. II.

## Of Appearance.

**I**N the first Chapter was declared the severall Writs of *Summons*, and the diversity between *Peers* and *Barons*; and that anciently neither the Writ nor the Tenure created a Baron, but the Investiture of Robes onely, and the election of the Commons. This shews the manner of their Appearance being so summoned.

*The appearance of the first day of  
Parliament.*

**F**irst, Let us consider which is the first day of the Parliament: Then their manner of Appearance.

The Writ shewes the day whereon the Parliament is to begin: And anciently, though the King, and but a few of the Lords appeared then, but the Parliament was adjourned in expectance of the rest, yet that was reckoned the first day of the Parliament, If his Majesty were present, *prout 6 Edw. 3. Octabis sanct. Hillarij. & 14 Edw. 3. in Lent.*

Anno

Anno 15 E. 3. xv Pasch. and divers other Parliaments in his time, and in his Successors R. 2.

If the Parliament be prorogued, for that the King cannot intend it the same day, new Writs of Summons were sent out anciently, and another day appointed, *prout Anno 23 E. 1. 2 Novemb.*

Anno 23 E. 1. 13 Julij, & An: 11 E. 2. 3 Martij. et An: 6 E. 1. 11 Decemb. &c.

At this day if the Parliament be summoned, the day is appointed in the Writs; but if the same be prorogued by Writ patent (as the manner is now) and another day appointed; that is reckoned the first day when the King is present, and the cause of Summons declared.

Of this the precedents happen so daily I need not recite any.

This may be the Rule; that is the first day of the Parliament, when the King himselfe is first present, and this agrees both with the ancient and modern times.

*The first dayes appearance.*

**N**O Records speak of such solemnity as is used at this day, neither could it be with that State, the King lying in the same

house, and his Lodgings neer the same rooms where the Parl. was kept.

And it plainly appears by many Records of E. 3. That on the first day of the Parliament, a proclamation was made in *Westminster Hall*, the Record sayes (*Feast Crie fait*) by the Kings Commandment; That all that were summoned to Parliament should repair to the painted Chamber, and so the Parliament began, that being reckoned the first day, though so few appeared: And it was adjourned to another day in expectation of the rest, *prout An: 37. 38. 40. 43. 45. 47. 50 E. 3.* Here could be no solemn procession to the Parliament in such state as is now used.

But here may rise a question how it should be known who were summoned, by which word was anciently understood the Commons as well as the Lords and Peers.

I answer, the Commons were called by the Retourns of the Sheriffs, the Lords were admitted in appearing in their Robes, not being created by Inveltiture as the Earls and Barons were (*prout* in the former Chapter) and they were all called in the House by the Clerks Roll before the King came. That the Lords were called, may be inferred by this, that the Parliaments have been often adjourned

adjourned the first day, because they were not all come, which could not otherwise be known but by the Call, so that they were called before it was adjourned: And it appears they were called the first day before the King came to Parliament of 18 E. 3. n<sup>o</sup> 5. which Parl. was adjourned also the first day for lack of appearance; and after the adjournment, and after the names of the Receivers and Tryers of Petitions, there is entered this Memorand. viz.

**Item**, Let the names of the Lords who are summoned to Parliament be viewed, read, and examined before the King in Parliament this day; and of them that are not come, let their names be delivered to the King in writing to ordain such punishment as he shall please, which shews plainly that the King was not present before when the Lords were called, for then this had been needless.

The next doubt is, In what place the Commons were called; The Record of R. 2. saith that the Knights and Burgeses were called by name in presence of the King, w<sup>ch</sup> shews they stayed without till then.

And 2 H. 4. *Consimile*.

Anno 13 H. 4. the Knights and Burgeses were called at the door of the painted Chamber

ber in the presence of the Steward of the Kings house as the manner is.

And at this day they are called by their names by the Clark of the Crown in the presence of the Lord Steward in the Court of Requests, whereof there are many precedents in *Qu. Eliz.* time.

Onely one precedent differs from all the latter (*viz.*) that of the 33 of *H. 8.* *Primo die Parliamenti*, where the Duke of *Suffolk* then Lord Steward commanded the Clark of the Parl. to read the names of the Commons, unto which every one answered, they being all in the Upper House below the Bar, and then the King came.

Now since the fifth year of *Qu. Eliz.* the Commons take the Oath of Supremacy; and since the third year of King *James*, they take the Oath of *Allegiance* also, which the Lord Steward administers unto some, and appoints certain of them his deputies, to give the same unto the rest.

The Lords are not called the first day, but have used to deliver their Writs onely to the Clerke of the Parliament: And the third day of the Parliam. the Summons being declared, and the Speaker being presented by the Commons; the second day the Lords are called by the Clerk of the Parliament, beginning



ning with the lowest Baron, and so ascending to the highest, and the Proxies and other excuses (if any of the absent Lords registered. Here I must confess one of my own *Errata's* : For being suddenly commanded to call the House, *Anno* 21 *Jac.* and unprovided of a Catalogue of their names, I made use of one then delivered me by the Earl Marshall, and began at the upper end with the Prince, and so descended : I quickly found mine own Errour, but none else perceived it. I proceeded, which I observed here least my Successors mistake also by that precedent.

*When the LORDS are to appear  
in their Robes.*

**T**he Heraulds can give the best satisfaction when the King and the Lords did first go to the Parliament in such solemn manner as now, I have a precedent thereof in my Uncle *Boyers* Collections of Honour and Armes : I doubt not but the Lords did ever appear in their Robes the first day, whereof we have no Parliament Records before the Journal books of *H. 8.* all the former being lost.

The

The Lords appear in their *Robes* also, whensoever the King is present (if their Lordships have notice thereof.)

And when their Lordships give judgment, and when the King gives the Royal assent to any one Bill or more by his Letters Patents, or sends a Commission to adjourn, prorogue, or dissolve the Parliament.

And in those cases the Lords sit all in their due places untill the Commission be read, and then the Lords Commissioners are to sit on formes overthwart the upper end of the House to execute their Commission.

Note this to be understood of such adjournment, &c. by the Commission, as the King himself hath used to be present at in person (*viz.*) of Adjournments, Prorogations, or Dissolutions of Parliament (*Sedente Curia*) But if the Parliament be adjourned, or Prorogued (*sedente Curia*) and afterwards the King by *Proclamation* prorogue the same to a further day (which happens often) in those cases the Lords Commissioners appear not in their Robes, for that the King himself never used to be present at any such adjournment in person.

If a Lord of Parliament either by the misprision of the Clerk or otherwise, be not ranked in his due place, and complains thereof,

of, the House appoints a Committee to search the Records for his due place, whereunto he is admitted without any other Ceremony, for that he is in the House already; *prout* the Earl of Surrey, Anno 6 H. 8. 15 Febr.

The Lord Morley, Anno 25 H. 8. 24 Martij.

The Lord Clinton and Stafford, An. 4. & 5 Ph. & M. 12 Feb.

But if the Lord that is summoned doth forbear to come because he is not ranked in his right place;

His claim is first to be derived by the house upon his Petition to the King, and then his Lordship is to be brought in his Robes between two Lords in their Robes. Also the King of Armes going before; *Prout* the Lord de-la-Ware, An: 39 Eliz. 24 Octob. 15 & 24 Novemb. If a Lord of Parliament dies in the interim of a Prorogation, and his son receives his Writ to appear at the next Session; his Lordship appeareth not in his Robes, for that Ceremony was performed by his Father the first day of Parliament; Onely he delivers his Writ to the Clerk who enters it the same day; *prout* Anno 7 Jacob. Richardus Com. Dorset, and there be very many precedents of this nature (*viz.*) That  
the

the Writ is onely recorded in such cases, and not a word of their appearance in Robes.

And it were very fit the Lords did continue this order to deliver their first Writs to the Clerk to be entred: For it records their pedigree as well as the time of their first coming to parl.

If a Lord of Parliament dyes (*sedente Curia*) and his Heir be summoned, he appears also without any ceremony, onely his first Writ is entred, and the day of his apperance, *prout An: 27 Eliz. 9 Feb. Tho: Doms. Darcy de Chiche*, and there be many precedents of this nature also.

And I remember well that the Lord Stanhop of Harrington dying (*sedente Curia*) in Parliament of 18 *Jacob.* his son *Charles* Lord Stanhop came and took his due place without any other Ceremony.

So did *Edward* Earl of Dorset after the death of his brother *Rich:* who dyed without issue Male in the Parl. 21 *Jac.*

And I have observed that divers Bishops have been summoned after the parliament is begun, in place of another Bishop who was dead, and onely delivered his Writ to the Clerk to be entred without any other Ceremony, which was observed also in former times, *prout An: 27 Eliz. 23 & 27 March, Episc. Petriburgi.*

If the eldest son of any Earle be summoned as a Baron after the Parliament is begun, he is to be brought in his Robes between those two Lotds, between whom he is to sit, Garter King of Arms going with his coat half way upon his left Arm, and his Lordship is to present his Writ to the Lord Chancellor, and to stay by his Woofsack untill the Clerk hath read the same, and then to be placed by those two Lords in his due place.

*Vide* a President of this *Ann. 7. Jacobi* for the Lord *Clinton*, the eldest son of the Earl *Lincoln*, who delivered his Writ kneeling to the Lord Chancellor, and stood by him untill it was read.

*Vide Ann. 7. Jacobi Consimile*, the Lord *Walden*.

And I remember well that the old Earl of *Lincoln* was very carefull both for the right place of his son, and the ancient ceremonies to be used at his sons first appearance.

The reason why Garter King at Arms is to wayt, & wear his Coat but half way on, is for that his Lordship is in expectance of an Earldom, when Garter is to do him further service, and to wear his Coat wholly on.

If a Lord be newly created during the Parliament, he is brought into the house by any two Lords of the same Form in their Robes,  
Garter

Gar-ter king of Arms going before with his Coat wholly on, and his Lordship is to present his Writ to the Lord Chancellor, which being read he is conducted to his place by those two Lords who brought him, Gar-ter going before, *prout* the Lord Denny *Ann. 2. Jacobi 7. Febr.*

And the Lord *Knyvet*, *Anno 4. Jacobi 4. Julii*, yet in the Parliament *Anno 18. Jacobi 20. December*, the Viscount *Colchester* being newly created in the interim of the adjournment of that Parliament, And brought in at the next access; Gar-ter King at Arms carryed the Letters Patents of his said creation and presented the same to the then Lord Keeper, and his Lordship delivered them to the Viscount and so immediately he was placed.

So was the Lord Viscount *Rockford* brought in the same day and so also were the Lords *Brook*, *Mountagne* and *Cranfield*, being all new created Barons.

*Quere Ration.* why they presented not the Writs according to the ancient manner.

*Anno 21 Jacobi 25 Februarii* divers Lords who were newly created and others who were in by discent; and were then first summoned, they all having appeared the first day of the Parliament in their Robes, were not with-

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withstanding brought in the first day of the Parliament with the same ceremonies as belong to a Lord newly created after the Parliament is begun when the first appears:

The Earl Marshall being present and directing the same.

### The Names of the said Lords

*George* Duke of *Buckingham* created a Duke before the Parliament began.

*Henry* Earl of *Kent* came in by descent

*James* Earl of *Carlisle* by new Creation,

*Lyonel*, Earl of *Middlesex* by new Creation.

*Christopher* Earl of *Anglesey* by new Creation.

*William* Earl of *Denbigh* by new Creation.

*Thomas* Viscount *Andover* by new Creation.

*Henry* Lord *de la Ware* by descent.

Lord *Barkley* by descent.

*Robert* Lord *Cary* of *Lepington* by new Creation.

And *William* Lord *Grey* of *Warke* by new Creation.

## CHAP. III.

*Locus & Modus sedendi.*

**I**T follows to shew in what place they meet and the manner of their sitting.

*Whether the Lords and Commons did Anciently sit in one Room together.*

**V**Idē the ancient Manuscript *Modus sedendi Parliamenti Cap de Cas. et Ind. difficilibus.*

*Cum dubitatio et Casus difficilis Pacis vel guerra emergat, &c. Injungatur per Regem seu ex parte Regis, si Rex non interfuit cuilibet graduum Parium quod quilibet graduum sedeat per se & liberetur Casus ille Clerico suo inscriptis, & in certo loco recitari jacent, ita quod ipsi Considerent inter se qualiter Melius procedi poterit in Casu illo, &c.*

With this agrees that with the 6 of E 3 at the Parliament held at *Torke. viz.*

The cause of Summons being touching Scotland the (prelates with the Clergy thereof by themselves) the Dukes and Barons by them.



themselves ) and afterwards they delivered their Joint-answer to the King.

In the former Parliament of that year at *Westminster Crastino Maria*, the cause was touching *Ireland*: the Prelates consulted by themselves, and after they gave a Joint-Answer and they all joined in one grant of a subsidie to the King.

Anno 6. E. 3. *Octabis Hillarii* the Prelats treated by themselves, so did the Lords, and so did the Commons, and afterwards their Joint-Answer was reported to the King by the Bishop of *Winchester*.

By these precedents it appears plainly that the Lords and Commons did first meet together in one Room, and yet had divers Rooms to consult in, severally and apart.

But this doth not directly and plainly prove that the Lords and Commons did sit together in one Room.

The cause of Summons was declared to them altogether touching an aid for the King, they considered thereof and joined in grant of the subsidie upon condition to have their petitions granted, a joint Committee of the Lords and Commons are appointed to sit upon the said petitions from day to day until they be dispatched and reduced into the form of a statute, the Committees are

named as well the Lords as the Commons.

Yet the two Houses sat apart: also that Parliament, for many things are recorded to be done by the Lords, whereunto the Commons were not joyned.

It is more of curiosity then of necessity to search for the truth of this matter.

*Anno 50.E.3.* the cause of Summons ended, the Commons were willed to withdraw themselves to their ancient place in the Chapter House of the Abbot of *Westminster*, and there to treat and consult amongst themselves.

This shewes plainly that they had a place assigned them of ould to sit in apart.

And when the King pleaseth he may have the Lords and Commons sit together in one place as they did *Anno 7. Jacobi* in the Court of Requests, the Lords sitting on the right hand by themselves, and the Commons on the left hand, that day when the noble Prince *Henry*, was created Prince of *Wales*.

*Whether the Commons did anciently sit at conference with the Lords.*

I have heard it often mentioned whether the Commons did sit anciently with the Lords or no.

I will not resolve this doubt, for no Record can be produced on the one side or on the other, so that the usage must direct us how it was in former times: And since the Commons do in other Matters enjoy more ample priviledges at this day then the ancient Records mentioned, divers privy Councillors, and others of the Kings servants being now of that house, from whence they were formerly exempted, (*prout* in the 1 Chapter) it is not likely that such honourable personages would have waved this one priviledge, and stand in a crowd if they might have claimed a seat for their ease, which they never did claim *temporibus H.8. E.6. P. et M.* nor of Queen Elizabeth.

It will be said that heretofore a Committee of the Lords have come into the house of Commons to confer with them which was used even in *Anno 3. H.8.* and there no doubt the Commons did sit and the Lords with them.

It is true that this happened sometimes but was not constantly observed and the Lords did (*discedere de fac.*) to go thither as it is resolved *Anno 2. R. 2. pl. Fui* *see. luce* now this is out of use.

Their

*Their manner of sitting in Parliament at this day.*

## The Kings Seat.

**H**IS Majestie sits in the Chair of Estate whensoever he is present; if represented by Commissioners either to begin or to hold the Parliament; the Commissioners (after the Commission is read) do now sit on the right side of the Chair of State beneath the steps.

*Anno 51. E. 3.* The Prince represented the King by Commission and his Highness did sit in the Chair of Estate.

No other Ancient precedent of Parliament-Record shews where such Commissioners did sit, neither *Anno 3. E. 3.* when *Lyonel* the Kings Son held the Parliament. Nor *Anno Edward 3* when *Edward* Prince of Wales, held the same, nor those of *H. 5.* and *H. 6.* when the Kings were in *France*: vide the Journal of 28. of *Eliz.* Where the Lord Treasurer Arch-Bishop of *Canterburie* *Burleigh* Lord Treasurer, and *Darby* Lord steward represented the Queens person by Commission, and the manner thereof described at large.

The

The Princes place

**H**IS Highness seat is on the left hand of the chair of Estate, that in the right hand was anciently for the King of *Scots*, when he used to come to our Parliaments.

The Kings childrens place.

**I**T is enacted *Anno 31. H. 8. Cap. 10.* that none but the Kings children do presume to sit at any side of the Cloath of State.

The Kings *Viceregent* in Ecclesiastical Jurisdiction his place.

**H**IS seat is by the said Statute of 31. *H. 8.* on the right side of the Parliament Chamber, above the Arch-Bishop of *Canterburie* upon the same forme.

The other officers are thus placed by the said statute (*viz.*)

**T**HE Lord Chancellor  
The Lord Treasurer.

The Lord President of the Kings Council  
The Lord Privie Seale.

Being of the degrees of Barons of Parliament on the left side of the Parliament Chamber, on the higher part of the Form, of the same side, above all Dukes except only such as shall happen to be the Kings son, the Kings Brother, the Kings Uncle, the Kings Nephew, or the Kings Brothers, or Sisters Son.

The great Chamberlain.

The Constable.

The Marshal.

The Lord Admiral

The Lord Steward.

The Kings Chamberlain above all others of the same Estates and degrees.

*Vide Anno 21 Jacobi* the Duke of *Buckingham* was admiral and placed next to the privy Seal, and above the Lord great Chamberlain; the Kings chief Secretary being of the degree of a Baron, above all Barons not having any of the offices above mentioned: and if a Bishop then above all other Bishops not having any of the offices above remembered.

It is also enacted by the said statute that if either the Lord Chancellor, Lord Treasurer, and President of the Kings Council, Lord privie Seal or chief Secretary shall be under the degree of a Baron of Parliament, and

& then such of them as shall be under the said degree shall be placed at the uppermost part of the sack, the one of them above the other in order as above rehearsed,

On the right side of the Chair of State the Bishops are thus ranked by the Statute of 31. H. 8. (*viz*) upon one forme.

The Lord Arch-Bishop of *Canterburie*.

The Lord Arch-Bishop of *York*.

The Bishop of *London*.

The Bishop of *Durham*.

The Bishop of *Winchester*.

Then all other Bishops on the same side after their ancients as it hath been accustomed: But at this day two ArchBishops set upon one forme, and then the other Bishops in order upon two forms on the right hand of the State.

The Earls sit on the first forme of the left hand of the State, and on the first forme of the Clerks Woolfacks, sit the Viscounts.

The Barons sit on the second forme of the left hand of the State, and upon divers other formes a cross the lower end of the house.

The

The Lord Chancellor, or the Lord Keeper (when the King is present, stands behind the cloath of State on the right hand) but when the King is not present, then his Lordship sits on the Woolfack thwart the House, the Seal and Mace by him.

The Judges sit on the inner side of the Woolfacks.

The Kings learned Council sit on the outside of the Woolfack next the Earls.

The Masters of the Chancery sit two on the same side, and two on the other sides next the Bishops.

The Clerk of the Crown, and the Clerk of the Parliament sit on the lower Woolfack and have a Table before them.

And the Clerk of the Parl. hath two Clerks under him, who kneel behind the said Woolfack, and write thereon.

When the King is present, none of the Lords are covered.

And the Judges and Attendants do stand up untill his Majestie wills them to sit down.

When the King is absent, the Lords do Reverence to the State, and salute the rest at their entrance into the House, and then take their place.

The Judges sit also, but are not covered until the Lord Chancellor signifies the Lords pleasures.

The



The Kings Council, and the Masters of the Chancery sit, but are never covered.

# CHAP. IV.

*On what dayes the Parliament  
may not sit.*

**I**n the ancient Manuscript, *De modo tenendi Parliamentum Chap. de diebus, & Horis, quod Parliament. non debet teneri diebus Dominicis sed canctis alijs illo die excepto, & alijs tribus diebus scilicet omnium sanctorum & Animarum, & Nat. sanct. Johannis Bapt. potest teneri.*

Yet Parl. have been summoned to be held on the Sunday (*viz.*)

*Anno 23 E. 1. 30 Septemb. Die dominico prox. post Festum sancti Martini in Hiem. And the same was proroged by a new summons of Novemb. following to be held Die dominico prox. post Festum beati Andrea Apost.*

*Anno 27 E. 1. 6 Feb. Die dominico. An: 28 E. 1. 24 Decemb. Consimile.*

*Et An: 33 E. 1. 22 Januar. & 35 Ed. 1.*

92      *Of Parliament days.*      Cap. 4.

27 Febr. An: 1 Ed. 2. 19 Januar. & eodem  
An: 10 Martij. An: 2 E. 3. & 3, 4, 5, 6.  
& 7 & 16 E. 2.

An: 1, 2. & 4 E. 3. But none after 4 E.  
3. There are not any Parl. Rolls extant to  
shew what the Parl. did on Sunday.

Yet I find that subsequent Parliam. have  
sate on Sunday, *prout.*

Anno 6 E. 3. n. 7. Saturday the house of  
Commons had leave to depart, and the Com-  
mons commanded to attend unto the next  
day, on which the Parliament was dissol-  
ved.

Anno 20 E. 3. N<sup>o</sup> 11. *in fine.* On Friday  
the Commons delivered in their Petitions,  
which were considered by the Lords, upon  
Saturday, Sunday, and Monday next follow-  
ing, and on that Monday they were answer-  
ed.

*Vide Contrarium*, An: 5. R. 2. The parl.  
was summoned to be held *Craft. omni. Anim.*  
which fell out to be on Sunday, and there-  
fore it was adjourned unto Monday n<sup>o</sup>: 1.

I find no Parliament summoned to be held  
on *All Saints day*, *All Souls*, or *St. John*  
*Baptists.*

*Chri-*

*Christmas day.*

**A** *Nno 3 E. 6.* The *Parl.* did sit on *Christmas day*, and read two Bills, and on *St. Stephens day*, and read one Bill: And on *St. Johns day*, but this is singular, and occasioned through the troublesome businesse of the Duke of *Somerset*.

*Convocation dayes.*

**A** *Nno 1 H. 8.* The Temporall Lords met in Convocation day, though they did no other busines then receive Bills from the Commons, and sometimes not so much. And on those dayes some one of the Lords (though none of the great Officers) *Ex mandato domini Regis, qui domini spirituales absentes, & in convocatione occupati sunt*) *Continnavit Parliamentum usq; in diem Crastinum*) The Lord Chancellor was then a Bishop, and absent also.

This continued untill the 7 of *H. 8.* which year the Lord Chancellor did the day before continue also the *Parl.* untill the day after, *prout.*

*Anno*

Anno 7. H. 8. 30 Novem Dominus Cellularius propterea quod Dom. spirituales in Convocatione Crastiono die, occupandi, continuavit prasens Parliament. usque in diem Lune.

The next precedent for Convocation days is An: 25. H. 8. For from the 17<sup>th</sup> until then we have no Journals.

Memorand. quod die Sabbati 22 Januarij (3<sup>o</sup> die Parliam.) decretum est quod Domini spirituales in Convocatione diebus Martij, & Veneris proxim. sequent. & ex tunc die Vener. (donec secus melius videtur) versari possent. et proceres sequentibus diebus sine Impedimento quotidie circa dimidietat. hora octav. ante meridiem in locis consuetis simul convenirent, ad tractandum et Consulendum circa Reipublica negotia.

Afterwards in this Parl. after the end of Hillary Term, this Friday was changed into Wednesday every week, but no order is entered for it in the Journal book: An: 3 E. 6. 4 Novem. Hodie assignat. est Die Veneris per Convent. Episc. et alior. ejusd. ordinis Ecclesi- ar. in Ecclesia Pauli.

## Star-Chamber dayes.

**A**Nno 25 H. 8. Mercurij 4. Februarij  
 Hodie Domin. Cancellar. de quo die Cra-  
 stino domini circa studia Negotia in Camera  
 Stellata consultari, et Dom. spirituales, Die  
 Veneris in Convocatione conversati fuerint, ex  
 consensu totius domus continuavit hoc presens  
 Parliamentum in diem Sabbathi hora con-  
 sacra.

I find no other precedent directly for this  
 and the Star-chamber days, being sometimes  
 one day in the week, sometimes another; it  
 appears not by ordinary continuances of the  
 Parl. that many days was permitted, *Quia*  
 a Star-chamber day. But when in *Q. Eliz.*  
 time the Star-chamber day was settled to be  
 on *Wednesdays*, you shall not find that the  
 Parliam. did sit on those days in the Term-  
 time.

Which was constantly observed also in  
 the time of our late King *James*, until the  
 parliam. 18 *Iac* 24 *April die Martis*, upon  
 motion made this day unto the House, that  
 there is a great cause in the midst of hear-  
 ing to be heard in the Star-chamber to mor-  
 row. The Lords were contented, not to sit  
 to morrow in the morning.

Provided

Provided that it be not drawn into a precedent; but that this House being the supreme Court, may sit upon a Star-chamber day, notwithstanding the absence of such Lords as do use to attend that Court.

And accordingly the House was adjourned unto the next day being *Wednesday* in the afternoon.

And the next Star-chamber day being *Friday* the 26. of *April*; the House did sit both in the forenoon, and afternoon.

## CHAP. V.

### *The making of Proxies prove the Lords Right to be summoned.*

Those Lords that could not appear according to their summons, made their *Proxies*, and even this sheweth their Right to be summoned, else what needed their *Proxies*.

But if they neither came, nor made *Proxies*, then for their disobedience unto the Kings Writ, they were amerced (*viz.*) Anciently an Earl at 100*l.* and a Baron at 100 marks.

Vide

Vide the ancient Manuscript, *Modus tenendi Parliament. cap. de Inchoatione parliam.*

Which since was qualified many times (viz.) An: 31 H. 6. N<sup>o</sup> 46. A Duke was taxed at 100 l. an Earl at 100 Marks, and a Baron at 40 l. if he came not to *Parl.*

### The ancient form of Proxies.

**E**xcellentissimo Principi ac Domino suo illustrissimo Domino Edwardo, Dei Gratia, Regi Anglie, et Francia, & Dom. Hibernie suis humilis Capellanus Johannes Abbas de Selbye Reve rentia & honore cum ju<sup>g</sup>i precum instantia apud deum quia impediment: variis, & Arduis Negotiis concernentib. reformationem status domus nostre sumus multipliciter impediti quod instanti Parlamento vestro apud Westminkt in quinden. sanct. Mich. prox. futur. tenendo sine genum dispendio dom. nostre predict. personaliter esse non valeamus.

Dilectos nobis in Christo & discretos viros dominos Henry de Barton, & Will. de Mercfield, Cleric. Lincol. Ecclesie Canonicos, & eorum quemlib. per se ad comparend. & audiend. pro nobis in hoc Parlamento tract. & consentiend. Una cum Prelatis & Regni procerib. super ijs que ad Ecclesie dei, & ipsius Regni utilitatem expedientia videbuntur,

H

nec

*hic non ad allegand. proponend. & proband. causas absentia, et non Comparit. nostra personali. procurat. nostros conjunctim, et divisim, et eorum utrumq; per se et in solidum ordinamus, facimus, et constituimus per presentes: Ratum et gratum Habetur. quicquid per duos procurator. nostros vel eorum alterum, Actum seu gestum extiterit in premissis. in cujus Rei Testimonium, &c.*

### Regist. de Selbye fol.

*In what Causes Proxies were made without the King's License.*

**I**N divers Writs of Summons the King denied to accept of *Proxies, ea vice.*

*Anno 6 E. 3. 27 Januar. Proxies are absolutely denied ea vice.*

*Anno 11 R. 2. 20 Martii, Proxies are also lately denied, ista vice.*

*Anno 6 R. 2. 7 Januarij. Proxies are absolutely denied, ista vice.*

*Anno 27 E. 3. 20 Novemb. Proxies are absolutely denied, ista vice.*

*Anno 39 E. 3. 20 Januar. Proxies are denied, ista vice. And the Lords demanded to appear the day before.*

*Anno*



Anno 45 E. 3. 8 Januar. *Ista vice* is left out, and is thus (*Scientes quod propter arduitatem, &c. Procuratores seu excusationem aliquam legitimo Cessante impedimento pro vobis admittere nolumus* (which clause) *Legitimo Cessante impedimento*) all the former precedents have.

Hereupon the Lords that could not come, obtained the Kings License, and made *Proxies*, as did the Abbot of *Selbye*, An. 22 E. 3. whereas to the Parliament, Anno 26 E. 3. (which had not that clause) he sent his *Proxy* without license, nor expressed any cause for his absence, save that he was hindred (*Impedimentis varijs, et arduis Negotijs*, for the Reformation of his Abbey.) *Vide Registr. de Selbye* in the hands of Sir Robert Cotton.

But this and the cause of denying their absence, *Ista vice* (*Legitimo Cessante Impedimento*) inserted in some special Writs, onely it seems that all other times they might make their *Proxies*, notwithstanding they had not first obtained the Kings License.

I have not seen any other precedents for it of the ancient times, then that of the Abbot of *Selbye*; but under H. 8. it was usuall in cases of sickness, *prout*.

An: 3 H. 8. 20 Die Parliamenti Relat. est quod Abbas Salop. gravi infirmitate deri-

netur quod hic interesse nequeat, & ideo constituit procuratores suos Episc. Covent. & Lichfield, & Comitem Salop. Conjunctim & divisim.

Anno 6 H. 8. 12<sup>o</sup> Febr. Domin. Scroop de Upsall aegritud. detentus abest affidante ejus Famulo Jacobo Marshall, suusq; constituit Procuratores Alein de B: et Dom. Darcy.

An. 28 H. 8. 10 Junij, Consimile pro Abb. Monast. Salop.

Anno 26 H. 8. ( Consimile ) pro Domino Zouche. By which it appears plainly they had not the Kings License; yet in such cases an Affidavit was made of their sickness.

*The Kings License to be absent, and  
to make Proxies.*

I Have seen two Precedents thereof, Anno 22 E. 3. to the Abbot of Selbye, when the King had denyed in his Writ to allow of Proxies *ea vice*.

The other unto the said Abbot, 2 Hen. 4. The first was under the privy Seal: Nay, the Abbots servant was so caretull, that he procured a Warrant under the Privy Seal of the Kings allowance of his Procurator.

The other 2 H. 4. was under the Signet onely, and they both testified the Lords name

name who procured the License from the King.

*The ancient forme of the Kings License  
to be absent.*

**E**Dward per la Grace de dieu Roy d' Eng-  
leterre, et de France, et Seigneur de Ire-  
land, a vostre Ch. dudicm Abbey de Selbye Sa-  
luts. Coment q' per grosses et urge antz besoigns  
touchants vous et reste de nostre Parliament a  
Westminst. et sur ce nous vous mandez par  
Brieffe souz nostre graund Seale de cy estre  
in propr. persone sanz Faire Procurat. en telle  
partie; mentinent a la Request. nostre Chare  
et foiall Johann Darcy nous vous tenons par  
excuse de vostre venue in propre persone a  
mesme nostr. parlement, cest soitz issin, q' faces  
un suffisaunt Procurator de y Venir en Vostre  
nom en maner appent nient Veillantz q vous ne  
soiz endamage ne m pesche en temps a venir  
par Reason de nostre mandement, sinen soit q' un  
Chose vous signifions per cestes nos litteres.  
Don souz nostre Privee Seal a Westminst. le  
13 jour de Decemb. An. de nostre Regne de  
Angleterre 22. et de France ix.

*The Kings License of latter times.*

**A**Nno 1 H. 8. 22. Die Parliamenti Licentiatuſ eſt Abbas de Crowland per Cancell. et Theſaur. per procurator ſuos Alb. de Ramſey, et dictum Theſaur. id eſt. The Chancellor and Treasuſer ſignified, that the King gave the Abbot Liſenſe to depart, &c. And not that the Chancellor and Treasuſer gave him leave; prout An<sup>o</sup>. 6 H. 8. (in the beginning of the Book, Abbas ſancti Auguſtini de Cont. abſence ex licentia Regis Dom. Bergavenny Nuncio, et conſtit. procuratores, &c. And the Liſenſe of divers others to be abſent is recorded in like manner.

Yet in theſe years ſome have their liſenſes expreſſed to be per literas dom. Regis prout eodem An. Dom. Haſtings abſens ex licentia Dom. Regis et patet per literas ibid. 9 Feb. Conſimile pro Abb. ſancti Benediſti de Hulmo.

An: 7 H. 8. 1<sup>o</sup> P. die hodie recepta eſt billa Regis Manu ſignata per quam dominus Rex licentiauit Edrum. Sutton Militem Dom. de Dudley, &c.

Conſimil. pro Abbat de Thorney et pro Ab. de Ramſey, et pro Ab. Salop. Yet the Liſenſe in ſelfe was not alway ſhewen; prout ibidem Dom.

*Dom. Rex licentiavit Abb. de Malmſbury ut paret, ex dictis Abb. de Wynchcomb, Will: Cump-ton Milite Nuntio existente, &c.*

*An: 25 H. 8. 28. 31. & 35 H. 8.* the Proxies are endited thus ; *Litera procurat.* of such a Lord, *Absentis ex licentia Dom. Regis, Attestante* such a one ; But whether the License were by word of Mouth, or otherwise by Bill signed with the Kings Hand, *non Constat.*

The Kings verball Licence is sufficient ; Yet I suppose they then had for the most part a formall License signed by the King ; and it being not produced, a Testimonial thereof was required, which was sometimes testified by a Lord, and sometimes by a stranger ; prout *An: 25 H. 8. 7 Jan.*

*Litera Procurat. in quibus Abbas de Evesham sub Reg. grat. absens, attestante Thoma Cromwel Arm. constituit procur. &c.*

*Lettres procurator. in quib. Dom. la Ware, &c. Attestante Thoma Cromwel, &c.*

*Litera, &c. Abbas de Crowland, &c. Attestante Magistro Cecill, &c. Litura, &c. Com. Essex, &c. attestante Com. Oxon.*

*Consim. An: 28. 31. &c. H. 8.* and downward, neither the License nor any such testimonial was required, onely it satisfied that the Letters of Proxie mentioned the Kings

Licence, which none will presume on unless he had it.

*Unto whom Proxies may be made.*

A Proxy cannot be made to a Lord that is absent himself. *Vide An. 38 H. 8. in fine Libri Journal* this entrance (*viz.*)

The Lord *Latimer* sent his Proxy, which the Clerk received, but was repealed by the Lord Chancellor, for that the Lord *Latimers* Deputies were not present.

So if the Lord unto whom the proxy is made, be afterwards absent, the Proxy is void; Yea, although the Procurator be absent *ex licentia Regis*, and hath made a procurator also for himself, for the proxy is but an authority to give another mans assent, which cannot be transferred to a 3d. person. And therefore in such case the Lord *Vaux* made a second proxy *Anno 18 Jacobi Regis*, which I think was rather to detain his particular Vote (a dignity particular to the Lords of Parl.) then to avoid the Kings displeasure) The first proxy being a sufficient excuse for his absence.

Neither is it the use now to make proxies unto strangers who are no Members of the House, nor to any of the Attendants, as to the

the Judges, Barons of the Exchequer, or the like.

Yet there are divers precedents that the Spirituall Lords have made proxies unto strangers; prout the Abbot of *Selbye* made *John Gouldale* a Monck of that house, and *M Will: R. Clerk* his procurator.

*Anno E. 3.* the year is not recorded.

And divers other precedents there are of this nature. The Lords Temporal had then the like right, and we may guess that they did make the like Proxies unto Strangers by this, that *Anno 14 Edw. 3.* in *Middle Lert.* Mounf. *William Scot*, and Mounf. *Will: de la Pool* were not summoned, and yet were appointed Tryers of Petitions, a matter belonging to the Lords of the upper House:

So we may guess they came with Proxies not of any Spiritual Lords (for they sent Clergymen) but of the Temporal Lords, for they have the title of *Monsieur*, which sheweth they were Laymen.

So we may guess also that *Monsieur de sanct. Paul*, *Monsieur John de Pultenye*, *Monf. Thomas Rookbie*, came with Proxies to that Parl. for they were not summoned; and yet of divers Committees premiscue with other Lords in matters touching *Flanders*, *Bruxels*, and the Marches of *Scotland*.

*Anno*

An. 14 Edw. 3. n<sup>o</sup>. 13, 14. & 17. So that strangers had Proxies, place, and voice in Parl.

But the question is, where they did sit? surely not in that Lords seat whose procurator he was; yet they do so at a generall Council or Dyet beyond the Seas.

*The form of the Kings License to be absent at this day*

The first extant is in the Journal of 8 E.  
*liz. in hac ver.*

**R**ight Trusty, and wel-beloved, We greet you well. Whereas we are informed that by reason of sickness you are not able to make your repair hither, to this our Session of Parl. to be holden at *Westminst.* We have thought good by these our Letters to dispense you for your absense, and to license you to remain still at home for this time, so nevertheless that you do send up your Proxy to some such personage as may be for you, and in your name give his Voyce, and assent, or deny to such matters as shall be treated and concluded upon in our said Parl. and this our Letters shall be your Warrant. Given under our Signet at our Palace at *Westminst.* the 20 of *Septemb.* in the 8. year of our Reign.

*The*



The form of the *Proxie* at this  
day.

**O**mnibus Christi fidelibus ad quos hoc præ-  
sens scriptum pervenerit, Edwardus Do-  
minus Zouche salutem. noveritis me præfatum  
Domini Zouche per licentiam. Servi-  
nissimi Domini nostri regis a præfenti hoc  
suo Parlamento tent. et in choato apud  
Westminster, duodecimo die mensis Februarii  
ult. præterit. sufficienter excusat abesse, no-  
minare, ordinare, constituere dilect. mihi  
in Christo prænobilem, & honorand. virum  
Henricum Comit. Southamton præclarissimi  
Ordinis Garterii Militem, meum verum,  
Certum et in dubitatum factorem, Attorna-  
tum et procuratorem per presentes eidemque  
procuratori meo dare et concedere plenam  
authoritatem, et potestatem pro me et nomine  
meo et de super quibuscunque causis exponend.  
sen declarand. tractand. tractatibusq; hu-  
jusmodi mihi factis seu faciendis consilium  
nomine meo impendend. statutisq; etiam et or-  
dinationibus que ex maturo, deliberato Iudicio  
Dominorum tam spiritualium quam tempora-  
lium in eodem Parlamento congregator. in-  
aestuari, sen ordinari contigerint, nomine meo  
consentiendum eisdemque si opus fuerit sub  
scri-

scribend. ceteraque omnia et singula quae in  
premissis necessaria fuerunt seu quo modo libet  
requisita faciend. et exercend. in tam am-  
plis modo et forma prout ego ipse facere pos-  
sem aut deberem si praesens personaliter interes-  
sem. ratum et gratum habens et habiturus totū  
et quicquid dictus procurator meus statuerit  
aut fecerit in premissis; in cuius rei testimoni-  
um praesentibus subscripsi sigillumque meum  
apposui; datum decimo die Decemb. Anno  
Regni dicti Domini nostri Jacobi Dei gratia  
Angliae, Francia, et Hiberniae Regis, fidei de-  
fensor &c, vicesimo, et scotiae quinquagesimo  
Septimo.

Omnibus Christi fidelibus ad quos hoc pre-  
sens scriptum pervenerit. I. domin. G. salutem.  
noveritis praesatum Domin. G. per licentiam serene-  
nissimi Domini nostri Regis a praesenti hac suo  
Parliamento tento et inchoat, apud West-  
minster duodecimo Die mensis Februarii 1623  
Et continuat. per diversas prorogationes usq;  
ad & in vicesimum Diem April. ult. praterit:  
efficienter excusatum abesse, &c. ut supra.

CHAP. VI.

De Summon. Causa.

**B**Y whom the summons ought to be declared *vide manuscript. de modo tenendi Parliament. Cap. de pronuntiatione pro Parl. Cancell. Anglie vel Capitalis iusticiarius qui tenet placita coram Rege vel alius honestus, & facundus iusticiarius vel clericus pronuntiare debet causam Parliamenti, Primo in genere & postea in specie.*

*Vide tamen 9 H 6. n. 1. Pro eo quod Johannes Episc. Eborum Cancellarius Anglie, cui ratione officii sui secundum consuetudinem Regni Anglie pertinuit causam summon. pronuntiare, &c. infirmitate detinetur, &c. Magist. Henricus Lymwood legum Doctor de Mandato dicti custodis declaravit, &c.*

And in the 5. of E. 3. the first Parliament now extant that hath the Journal proceedings of the Parliament (which anciently was not recorded) The Bishop of Winchester being Chancellor declared the cause of Summons.

*An. 6. E. 3. Cro. Mich. C. consimile.*

*An 6. E. 3. In a post festi. sancti Gregorii the*

the Arch-Bishop of *Canterburie* declared the cause of Summons touching the Kings going into the holy Land with the French King; then the Bishop *Winchester* being the Chancellor declared the same also: and afterwards the Lord chief-Justice *Jefferie*, by the Kings commandement declared other causes for which the Parliament was summoned (*viz*) to redresse the breach of peace, and other mischiefs at home n<sup>o</sup> 6.

And when the breach of peace was handled, the Bishops and the procurators for the Clergy departed all out of the house, for that it did not belong unto them. And so the Lord chief Justice was Speaker all that Parliament n<sup>o</sup> 10 et 12. and so the chief Justice was Speaker in many Parliaments in *E. 3.* and in the 2 *H. 4* but in no other Kings time when the Lord Chancellor was present.

Upon what occasions the cause of summons have been declared by the Lord chief Justice *tempore E. 3.* though the Chancellor were present.

Observe the occasions to have bin offered when a Bishop was Chancellor and the cause of summons was either touching Malefactors

factors, or breach of the peace or the like, for then none of the Bishops or the Clergy could (by Canon of the Church) be present, Or when it concerned the usurpations of the Pope for *Ceaux paroles ne gisent nye enbouch de Prelate* saies the Record *An. 51. E. 3.*

Therefore in divers years of *E. 3.* the same hath been declared by the Lord chief Justice *prout An. 6. E. 3 luna post finem sancti Georgii* departed out of the house when these matters which concerned the breach of peace were handled *An. 6. E. 3. veneris devant le Feste sancti Nicholai* by the Lord chief Justice *Jefferie le Scroop* concerning Ireland and the malice of the Rebels there, &c.

*An. 6. E. 3. Octabis sancti Hilarii* by *Jefferie le Scroop* Lord chief Justice touching Scotland and the Marches.

*An. 13. E. 3. Quinden. Mich.* it is not recorded by whom the cause of summons was declared nor *Eodem An. Octabis sancti Hilarii*, nor 14 *Ed 3.* in Lent, nor in the second Parliament in that year nor 15 *E. 3.* nor 20 *E. 3.* nor 25. *E. 3 Octabis purificationis Mariae.*

*An. 17. E. 3* the cause of summons touching France was begun by the Chancellor in general but pursued in particular by *Monsr. Barthol. Bnrgherss no. 7.* yet the Chancellor

was

was speaker afterwards *n. 10.* Touching the better observation of the Laws of the Land, and against maintenance.

But the usurpations of the Pope were treated *per Comites, Barones, et autres nobles, et toute Le Commo.* vide the petition for the statute against provisions; &c. *n. 6.* The prelates are not named.

*Anno 21. E. 3. Cro. Hillarii per Mons. William de Thorpe* touching the French Wars and how the peace may be kept at home.

*An. 22. E. 3. by Mons. William de Thorpe* Chief Justice touching the Wars of France

*An. 25. E. 3. in Festo Hilarii per Mons. de Sharesball* chief Justice touching the disturbers of the peace, and maintainors of quarrels, &c. And also touching the Realm of France, the Kings Inheritance.

*Ann. 27. E. 3. At a great Council per William Sharesball* touching the staple

*An. 29. E. 3. Cro. sanct. Martini Mons. William de Sharesball Chr. Chief Justice dit que il pleist a Roy que la Cause de summons soit Monstre per Mons. Walter de Maunye* touching France.

*An. 26 E. 3. per Mons. Henry de Grey* chief Justice touching the libertie of the Church and the peace of the Land, &c. And touching

touching *Scotland*, and to advance the small price of Wool, &c.

*Anno 37 E. 3. Octab. Hillar.* Proclamation was made by the Kings commandment in *Westminster Hall*, that all the Prelates, Lords and Commons who were come to the Parliament, should draw themselves to the painted Chamber; and afterwards on the same day there being in the said Chamber the Chancellour, Treasurer, and some of the Prelates, Lords and Commons, who were come to the Parliament, Sir *Henry Green* the Kings Chief Justice told them in English, that the King is ready to begin his Parliament, but that many of the Prelates, Lords, and Commons who are summoned are not yet come, wherefore the King willeth that they should depart and take their ease untill Munday. On which day the cause of Summons was declared by the Bishop of *Ely* then Chancellour, touching the liberties of the Church, and the grievances of the people.

These are the Parliaments of *Ed. 3.* that mentioned the Chief Justice.

In all the subsequent Parliaments in his time, the cause of Summons was declared by the Chancellour, and he hath been Spaker.

Except that of *47 Ed. 3.* The summons was declared by Sir *John Knevet* Chancellour,

lor, and the next day by Sir *Guy Brian* more particularly; and that 15 *E. 3.* where the cause touching Modern Affairs was declared by the Bishop of *St. David* the Chancellor, and the usurpation of the Pope by Monsieur *Robert de Ashton* the Kings Chamberlain.

Since *E. 3.* the Cause of Summons was ever declared by the Chancellor, if he were present, though the day after some other Matters have been opened unto the Lords and Commons, *prout* by the Steward of the Kings house.

*Anno 2 R. 2.* at Gloucester & *Anno 5 R. 2.* by Sir *Hugh Segrave* the Kings Treasurer, and *Anno 6 R. 2:* by the Bishop of *Hereford*, &c.

The like hath been in latter times, *Anno 21 Jacobi*, by the Duke of *Buckingham* touching the Match with *Spain*, and the recovery of the *Palatinate*, &c.

*An: 2 H: 4:* The cause of summons was declared by Sir *William Thirving* Chief Justice of the Common Pleas.

Yet the parliament businesse was afterwards managed by the Chancellor not present the first day.

*Whither be that anciently declared the Cause*



Cap. 6. *De summonitionis Causa.* 115

*Cause of summons not being the Chancellor were Speaker also all the Parliament, though the Chancellor was present.*

These ordinary matters are not entred usually in the Rolls of *E. 3.* yet by some we may guess at the rest.

Vide *Anno 25 E. 3.* the summons were declared by *William de Shareshall* Chief Justice; and Receivers and Tryers of Petitions being read, he willed the Commons to put their advice in Writing, and deliver it to the King on Thursday following: so that he was Speaker, and yet the Bishop of Winchester was Chancellor, and present; for the Record sayes, that he delivered the Lord of *Arundels* Petition unto the Clerk to be entred, *N<sup>o</sup> 8. et 9.*

*Anno 25 E. 3. in festo sancti Hillarij*, Sir *William Shareshall* Chief Justice delivered the cause of Summons, *N<sup>o</sup> 1. 6.* and on Friday following willed them to deliver in their petitions *N<sup>o</sup> 8.* so he managed the *Parlam.* businesse, and yet the Chancellor was present, for he is appointed to assist in the trying of Petitions, the cause of importance, *N<sup>o</sup> 3. & 4.*

And in all other Parliaments of *Edm. 3.*

lor, and the next day by Sir *Guy Brian* more particularly; and that 15 *E. 3.* where the cause touching Modern Affairs was declared by the Bishop of *St. David* the Chancellor, and the usurpation of the Pope by Monsieur *Robert de Aiston* the Kings Chamberlain.

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*Whether he that anciently declared the Cause*

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These ordinary matters are not entred usually in the Rolls of E. 3. yet by some we may gueſs at the reſt.

Vide Anno 25 E. 3. the ſummons were declared by *William de Sharesball* Chief Juſtice; and Receivers and Tryers of Petitions being read, he willed the Commons to put their advice in Writing, and deliver it to the King on Thursday following: ſo that he was Speaker, and yet the Biſhop of *Wincheſter* was Chancellor, and preſent; for the Record ſayes, that he delivered the Lord of *Arundels* Petition unto the Clerk to be entred, N<sup>o</sup> 8. et 9.

Anno 25 E. 3. in feſto ſancti Hillarij, Sir *William Sharesball* Chief Juſtice delivered the cauſe of Summons, N<sup>o</sup> 1. 6. and on Friday following willed them to deliver in their petitions N<sup>o</sup> 8. ſo he managed the *Parlam.* buſineſſe, and yet the Chancellor was preſent, for he is appointed to aſſiſt in the trying of Petitions, the cauſe of importance, N<sup>o</sup> 3. & 4.

And in all other Parliaments of Edw. 3.

when the Kings cause of Summons was declared by the Chief Justice, the Chancellor was then present as may appear by the Tryers of Petitions.

So that in those Parliaments it cannot be said that the Chief Justice did supply the Lord Chancellors place (for that is properly when he is absent) but was appointed by the King to be Speaker that Parl.

*Anno 29 Ed. 3.* The Chief Justice declared that the Kings pleasure was that the cause of Summons should be declared by Monsieur *Walter de Manny*, and so it was; Yet the Chief Justice managed the Parliament businesse as Speaker. For presently after Monsieur *Manny* his discourse, he called the Commons to advise thereof, &c. and make ready their Petitions, N<sup>o</sup> 10.

And the petition of the Earl of *March* being read, it was said by Monsieur *Vvil. Shreshall*, and the Lords then present, with one minde, and one accord, that it seemed to them, That the Petition was good and reasonable to them, &c. *Ibid.* attet the Petitions of the Commons; here you see the Chief Justice, ranked first above the Lords in delivering of their Votes.

So that it is plain, the Chief Justice managed the parliament businesse as Speaker  
of

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of the Parliament appointed by the King, and that he did execute, (not supply) the place of the Chancellor therein.

For in such cases where the Chancellors place is supplied, there when the Chancelour comes, he executes his office himself.

*Prout An. 31 H. 6.* The Chancellor being absent (saith the Record) the K. commanded the Bishop of *Lincoln* to pronounce the cause of Summons, N<sup>o</sup> 1. 6. *March.*

But when the Chancellor was come, he prorogued the Parl. by the Kings commandment, No: 12. the 18. of *March.*

*Whether he that anciently declared the Cause of Summons (not being Chancellor) had any Commission (as now) under the seale or no.*

Here by the ancient Parliaments, I meane those whose Records be kept in the Tower.

*Anno 6 E. 3. Luna post fest. sanct. Gregorij,* the Chief Justice by the Kings commandment declared the cause of Summons, &c.

No: *An: 21 E. 3. Consimile* by the Kings commandment declared the cause of Summons, &c. No.

*Anno 21 E. 3. Luna post fest sancti Gregorij, &c.* Consimile by the Kings commandment, which in my opinion is to be understood by a Verball commandment onely, and not by any commission: For none is recorded in any of the Rolls in his time, which would have been in one Parliam. or other, whereas Commissions of far lesse moment are entred.

In two Parliaments of *H. 6.* The Chancellors place was supplied by a verball authority. *prent*

*Anno 9 H. 6.* the Chancellor being sicke, unto whom it appertains (*Ratione officii sui*) to pronounce the cause of Summons, the Duke of *Gloucester* (the Kings protector) appointed Doctor *Lyndwood* to pronounce the same.

The 31 *H. 6.* the Chancellor being absent, the King commanded the Bishop of *Lincoln* to declare the cause of Summons There was then no Commission granted to supply the Chancellors place as now of later times.

In the end of this Chapter shall be shewed when the first Commission was granted, and precedents of the severall forms thereof.

*The manner how the Cause of Summons is declared, when the King is present in person, and how when his Majesty is represented by Commission.*

**T**He King is ever present when the cause of Summons is declared, either in person, or by Commission: If in person, the Lord Chancellor doth first remove from his place, which is on the Kings right hand behind the Chair of State, and confers privately with his Majestie.

The cause of which Ceremony may seem to be this; that as none but the King can call the Parliam. so it may appear that none but his Majestie can propound and direct wherefore it is called.

And this Ceremony is ever observed by the Lord Chancellor, before he speak any thing in Parliament when his Majesty is present. As for the continuance, prorogation, or dissolution of the Parliament, as they are not entred to be done (*Ex Mandato Domini Regis*) so they are not entred to be done *per le Roy*, whereby it seems this ceremony was observed also when the K. was present.

If the King be represented by Commission,

on, then the Lord Chancellor sits on the Woolfack. The Commission being read, the Commissioners repair to the seat prepared for them, on the right side of the Chair of State beneath the steps, then the Lord Chancellor ariseth and conferreth with the Commissioners, and returns to his place on the Woolfack, and there declares the cause of summons, *prout Anno 28 Eliz. 29 Oct.*

Vide *An: 51 Ed. 3.* The Prince of Wales represented the King in Parliament, and sat in the Chair of State.

Here may be a question, whether the Lord Chief Justice sate *tempore E. 3.* when he declared the cause of summons: And where he that should now supply the Lord Chancellors place, ought to sit when he declares the same in the Kings presence.

In my opinion he ought to sit in his own proper place, untill he doth arise to confer with the King, and then to declare the same in the Lord Chancellors place, as he may be neer the King. It is not fit that he should sit or stand at the Woolfack, and speak with his back to the King, but I have no precedent for it.



*The Commission to supply the  
Lord Chancellors place.*

**E** *Lizabeth* by the grace of God, Queen of *England, France, and Ireland*, Defender of the Faith, &c. To Our trusty and wel-beloved Sir *Robert Catelnye*, Knight, Chief Justice of the *Pleas* to be holden before Us, greeting. Whereas our trusty and wel-beloved Councillor Sir *Nicholas Bacon* Knight, Lord Keeper of our great Seal of *England* is at this present so visited with sickness that he is not able to come to the upper House of this Our Parliament holden at *Westminster*, nor there to supply the room and place in the said Upper House, among the Lords Spirituall and Temporal there assembled, as to the office of the Lord Chancellor or Lord Keeper of the great Seal of *England* hath been accustomed, We minding the same place and room to be supplied in all things as appertaineth, have named & appointed you: And by these presents do name, constitute, and appoint, and authorize you from day to day, and time to time hereafter during our pleasure, to use and occupy the place and Room ~~of the~~ said Lord Keeper

Keeper in our said Upper House of Parliament amongst the said Lords Spirituall and Temporal, there assembled, and there to do and execute in all things from day to day, and time to time, as the said Lord Keeper of the great Seal of *England* should, or might do, if he were there present, using, and supplying the same place; where We will and command you the said Sir *Robert Catelgne*, to attend into, and about the Execution of the Premisses with effect: And these our Letters Patents shall be your sufficient Warrant and Discharge for the same in every behalf. In witnesse whereof we have caused these our Letters to be made Patents. Witnesse our selfe at *Westminster* the 25. of *October*, in the 8. year of our Reign.

*Marten.*

CHAP.

CHAP. V.

*De Prolocutor. Domus Communis.*

*The Commons ever had a Speaker.*

**T**HAT the Commons have ever had a Speaker, I think none will doubt; they needed none in the ancient times when both Houses sate together: But I shewed in the third Chapter that the Commons ever had a Speaker for their consultation apart from the Lords, though they did often meet and sit together in one room, and then a Speaker was necessary, to avoyd confusion of speech and Arguments.

To resolve this more clear, *Vide lib. sancti Albini, fol. 207.* in Sir Robert Cotton's Library. The answer of the Parliament, *An. 44 H. 3.* to Pope *Alexander* touching the recall of *Adomar* the Elect Bishop of *Winchester* from banishment, viz. *Si Dom. Rex & Regni Majores hoc Volent, Comunitas tamen ipsius ingressum in Angliam jam nullatenus sustineret*, which is signed and sealed by all the Lords, and by *Petrus de Mounte-*  
forte

for Vice totius Comitatus; which shewes plainly that he was then Speaker: For the same words did Sir John Tiptoff their Speaker signe and seal to the Entayl of the Crown *Parl. An: 7. et 8 H. 5.*

There are some other Records, out of which one may guesse they had a Speaker; *prout Parl. An: 13 E. 3. N<sup>o</sup> 9. Les Chivaliers des Countes & les Commons responderent p<sup>r</sup> Monsieur William Trussell*, who may be supposed to be their Speaker.

But the first that doth directly name him is the *parliam. 51 E. 3. N<sup>o</sup> 87.*

The last day of the Parliament (saith the Record) Sir Thomas Hungerford, Knight, Speaker, declared to the Lords that he had moved the King to pardon all such as were unjustly convicted in the last Parliament: and that the King willed him to make special Bills for them, which he had done for seven, &c.

It can be no Argument that the Commons had no Speaker before the *51 E. 3.* because no former Records mention him; for this is to be noted, that the ancient Rolls did record onely what Acts passed between both Houses, and what Laws were made; and omitted the Forme and Ceremonies then used.

There

There are divers Parliament Rolls of R. 2. that mention the speaker in the beginning of this presentment or protestation, or the like, and ever after he is omitted in the same Rolls, and all is entred to be spoken by the Commons not naming him at all: *prout*

*Anno 1 R. 2*

*An. 2 R. 2. apud Gloucester no. 18. 20. 22. 23. 24. 26.*

*An. 4. R. 2. No. 10. 12, 13.*

*An. 5. R. 2. no. 10. 16.*

*An. 21. R. 2. no 8. 9. 14. 15.*

And the Parliament Rolls *Annis 1. 2. 4. 5. 6. et 11. H. 4.* do mention the Speakers protestation.

But whatsoever is spoken, or done as on the behalfe of the Commons is recorded to be done by the Commons, and the Speaker not once mentioned.

The like may be observed out of the Parliaments *An. 2. H. 6. no. 6.*

*An. 4. h. 6. no. 10. An. 6. h. 6 no. 16. Anno 29. h. 6. no. 16. And Anno 12. E. 4. no 10. And An. 22 E. 4. no 10. An. 29. h. 6. no 16. An. 31. h. 6. no. 3.* Which say that, that was spoken by the Commons, without doubt was spoken by the Speaker on their behalf.

Whereas in divers other Parliaments of  
R. 2.

R. 2, and *b. 4* and downewards to this day the partie that speaks for the Commons is alwaies recorded (*viz.*) the Speaker antiently, and the Messenger of later times,

And although the Parliament Rolls of 1. 2. 4. 5. 6. 17. 20. 21. years of R. 2. do mention the Speaker, and his solemn protestation is there made, and recorded; yet there be divers other Parliament Rolls: R. 2. wherein the Speaker is not once named at all (*viz.*) *An. 5. R. 2. the 7 Maii An. 6 R. 2. the of—OEtabis Mich. and Annis 9. 10. 11. 13. 14. 16. and 18 R. 2.* So that I do not marvel that the Records of *E. 3* (which are the first Parliament Rolls now extant) do not mention the Speaker, and therefore, I may boldly affirm, that the Commons had their Speaker aswell in the times of R. 2. when it is apparent they had a Speaker though not mentioned in the Rolls (*viz.*) in all the parliaments between the 16. and the 17. R. 2.

### The Election of the Speaker.

**A**T this day the cause of summons being declared, if by the K. (who in this learned age, hath ever delivered the same to the great admiration of the hearers) The Lord Chancellor confers first with his Majestie and

and then in his name commands the Commons to assemble in their house, and to choose one of their Members to be their Speaker, and to present him to his Majestie on a day certain.

If the cause of summons be delivered by the Lord Chancellor or by any other whom the King appointed, he concludes his speech with the Kings commandement to the Commons to chuse their Speaker, without removing from his place to confer first with his Majestie, or with the Commissioners if the King be absent

The Commons being thereupon assembled in their house, one of the Commons putteth the rest in mind of their charge given in the upper house, touching the chusing of a Speaker, And then doth of himself commend one unto them, and desireth their opinions to be signified by their affirmative or negative voices: And if any man stand up and speak against him so named alledging some reason, he ought to name another:

When it appeareth who is chosen, after a good pause he standeth up and sheweth what abilities are required in the speaker, and that there are divers amongst them well furnished with such qualities, &c. disableth himself, and prayeth a new choice to be made  
which

which is commonly answered with a full consent of voices upon his name.

After which two go unto him in the place where he sits, take him by the Arms, and lead him to the Chair, after a while he riseth, and uncovered, with humble thanks for their good opinion of him, promiseth his willing endeavour to do them service, &c.

Then some one commonly (he that first spake) puts them in mind of the day to present him, &c.

The mace is not carryed before him, untill his return, being presented to the King and allowed of.

Here may be 2 questions moved.

1. Whether the Commons might chuse their Speaker if the King commands them not.
2. Whether the election be in their own absolute choice.

For to clear these two we might view the ancient Records, those of R. 2 are the first that mention their Speaker.

It doth not appear by any of them, that the Commons had ever had any such commandement to chuse their Speaker, neither is a Word of it in any Record of E. 3 which have the speeches at large touching the cause of summons, most of them concluding with



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a charge of the Commons to consider and  
advise thereof amongst themselves, but  
nothing touching the Election of their  
Speaker.

Yet out of doubt they did first choose  
their Speaker, before they entred into any  
debate of charge.

The first charge to choose their Speaker, is  
in *Anno 2: Henry 4.* but that onely excepted,  
it is continued from 2 *Henry 4.* untill this  
day, and the long use hath made it so mate-  
rial, that without the Kings Commandement  
or leave, they cannot choose their Speaker,  
which appears plainly by this, that in *Anno*  
31. *H 6.* the Parliament being prorogued,  
and the Speaker arrested in execution in the  
*interim* before the access, The Commons  
prayed his enlargement, which after long  
debatement of the priviledges of Parliament  
was denied, and then certain of the Lords  
were sent to the Commons, and command-  
ed them in the Kings Name to choose a new  
Speaker, and thereupon they did so.

And of late years, in the time of *Queen E-*  
*lizabeth*, the Parliament being prorogued,  
and the Speaker dead in the *interim*, before  
the access, the Commons before they pro-  
ceeded to any businesse, acquainted the Lords  
therewith, and desired the Lords to intimate

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to the Queen, (as shall be more largely declared hereafter in this Chapter) and so were commanded by her Majesty to choose a new Speaker.

(2) But as touching the second Question, surely the Election of the Speaker was anciently free to the Commons, to choose whom they would of their own House, which appears in this, that the King never rejected any whom they made choice of.

*Vide* 5. R. 2. the Parliament began the 4th. of November, and the xxvijth. of November the Commons came and presented Sir Richard Walgrave, whom they had chosen for their Speaker, who excuseth himself, desiring to be discharged. But the King (*lui Chargeast del' faire per sa legiantie*) in as much as his companions had chosen him, N<sup>o</sup>: 9.

Whereby it appears plainly that the choice was absolutely in their own power.

### The Presentment of the S P E A K E R.

**A**T the Day appointed, his Majesty sitting in his Royal Throne, and the Lords and all in their Robes.

The

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The Commons are called in, who being come, the Speaker is brought between two of them, with low obeisances to the Barr, and so presented at the Barr unto his Majesty: The presentment of the Speaker is not recorded in any of the Rolles of *E. 3.*

And none of *R. 2.* speaks of the Kings Commandement to choose their Speaker, so that there could not be any day appointed to present him: yet I suppose the Commons did ever first present their Speaker, before they declared any thing to the King, otherwise what needed the Speakers excuse unto the King, before he was admitted to speak in the first year of *R. 2.* which no Record saies was a new Institution, and therefore no doubt was in use also under *Edward* the third, and before.

From the second year of *Hen. 4th.* and downwards, the Commons are willed to choose their Speaker, and to present him.

The Speakers Excuse.

His is now formal and out of modestly, for he first excuseth himself unto the Commons when they elect him, and afterwards to the King when he is present.

The first excuse that I find is that of Sir

K<sup>a</sup>

*Richard*

Richard Walgrave Knight, Speaker, Anno 5. R. 2.

Whom the King charged upon his Allegiance to take it upon himself, he was chosen by the Commons.

The next is Anno 1. Henry 4. of Sir John Chenye, who made no excuse at his presentment: But the next day after he and they came before the King, and declared his disability to serve by reason of a sudden disease: And that the Commons had chosen Sir John Dorewood in his place, beseeching his Majesty to allow thereof, which the King did, and commanded Sir John Dorewood to be their Speaker, and he made the common protestation for himself, and the Commons, but no excuse no 63.

The next excuse is Anno 5. H. 4. N<sup>o</sup>. 8. of Sir Arnold Savage, which the King would not allow of.

Anno 6: H: 4: N<sup>o</sup>: 8: Sir William Starmy made no excuse.

An. 7: & 8. H: 4: N<sup>o</sup>: 9. Sir John Tiptoft desired to be excused in respect of his youth, But the King affirmed the Election.

And all other Speakers in Hen: 4: his time, desired to be excused, and some under H: 5: and some others did not; it was not constantly observed, but from the 6th: year of Henry 6.

Henry 6: since which time they have all (except two) desired to be excused: yet none were excused save onely Sir John Popham Knight, *Anno xxviij. H: 6:* whom the King discharged, and thereupon the Commons chose, and presented *William Thresham* Esq; who made no excuse, neither did Sir *William Oldhall*, *Anno xxix. H: 6:* desire to be excused.

At this day, the Speaker having made his excuse, the Lord Chancellor confers with the King, and then telleth him that his Majesty doth approve the Commons choice, and will not allow of his excuse.

Then the Speaker proceeded to his speech, but anciently he made first a protestation as followeth.

### The *S P E A K E R S* Protestation.

**T**He first Protestation is that of 1 R: 2: No: 15. yet no doubt the like was made in former times, though not entred; For I find no new Institution, or Order for this, neither could it be new, being in the beginning of the first Parliameut of this young King.

The words of the Protestation are these, (*viz.*) That what he was to say was from the whole House, and therefore required that if he should happily speak any thing without their consents, that the same might be amended before his departure from the same place, N<sup>o</sup>: 15.

*Anno 7: H: 4: N<sup>o</sup>: 9:* Sir *John Tiptoft* was presented and affirmed by the King, his excuse by reason of his youth being first recited, this was the second of *March*; on the xxviiijth. day of *March*, he made the common Protestation, it should seem he was in good hope to be excused: And therefore he was unprovided of a Protestation, which he made not untill he had somewhat else to speak on the behalf of the Commons, and desired a confirmation of their priviledges: on the second of *April*, he desired his Protestation to be entred, and desired also in the name of the Commons, that if they shall deliver any thing in writing, the same writing may be delivered to them again, at any time during the Parliament, to be amended if need be at their pleasure, unto which the King assented.

At this day the Speaker wholly omits the Protestation, neither is it now needfull, for he never comes to speak on the behalf of the Commons

Commons, unlesse to demand Judgement against any whom they have accused to the Lords.

### His Spake ancient at this day.

**A**nciently the Speaker came not before the King, untill he had somewhat to say unto his Majesty, on the behalf of the Commons, and then having first made his protestation for amendment of any thing he should speak otherwise then he was directed: He proceeded to spake in the name of the Commons, and if he speak any thing of his own mind, as sometimes it hapned, he declared it so, but never made any Oration, as now of latter times.

To prove all this, *Vide* all the Parliaments of R:2: where the Speakers Protestation is first made.

*Anno 1: R:2:* His speech followes his Protestation, but it concernes not the cause of Summons, but matters *dehors*, so that it seemes he was directed therein by the Commons.

*Anno 2. R. 2.* he rehearseth the Chancellors speech, and answers in the Name of the Commons, which shewes plainly the Com-

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mons direction for his speech.

*Anno 3. R. 2.* he delivers the answer of the Commons touching the aid required.

*Anno 6. R. 2.* The Commons debated two days amongst themselves, of their charge touching the Kings passage into *Flanders*, then they desired conference with the Lords, after consultation had, the Speaker came, and made his Protestation, and then delivered the Answer of the Commons, so that the Speaker came not untill the Commons had agreed what he should say. And no Record *Ed 3.* mentioned either the Speakers presentment or protestation, But the answer of the Commons when they were agreed thereon; though out of doubt the same was delivered by the Speaker onely.

Afterwards, *Anno xvij. R. 2.* For between the 6th. and the 17. No Speaker is Recorded.

The Speakers presentment and protestation are onely entred, and no speech the first day, *Anno xx. & xxi. Consimile.*

And so in very many Parliaments of *H. 4. 5* and *H. 6.* and *E. 4.* and downwards to the 6. *H. 8.*

Which Protestation the Commons also directed, as may appear *Anno xiiij. H. 4.* where the Speaker required on the behalf of the Commons



Commons, that it would please the King, that they might be advised of their Protestations, untill the next day; which plainly shewes, That the Speaker spake nothing (his excuse excepted) but what the Commons advised him.

*Vide etiam Anno 2. H. 4.* the Speakers protestation being allowed, he then of his own authority (saith the Record) rehearsed the cause of Summons.

So that if he made any speech of his own he declared it so.

Of latter times, the Speakers speech is what it pleaseth himself, having no direction at all from the Commons touching the same; Neither do now omit their ancient protestation, and in lieu thereof, make Petition to the King on the behalf of the Commons, some in generall words, for all their ancient words, and some in particular.

1. For access unto his Majesty.
2. For freedom of speech.
3. And for freedom from Arrests.

And they did ever enjoy these priviledges in as ample manner as now, though not formerly prayed by the Speaker.

I have entred this last Speakers speech, *Sir Thomas Crewe* at large, in the Journal xxi.

*Jacobi*

*Jacobi Rs.* which in his opinion is the best that is Recorded since the 6. of *H.8.* it consists not in verball praises, but in real, fit for the time, and well befeeming the dignity of a Parliament.

The Speaker having ended his Oration, wherein he alwayes makes some requests on the behalf of the Commons: The Lord Chancellor confers again with the King, & makes answer thereunto in his Majesties name, granting his requests for access to his Majesty, and for their Liberty and Priviledges in as ample manner, as they have enjoyed them in any time of his Majesties Progenitors.

That the Commons ever enjoyed those priviledges, which the Speaker now petitions for, though never desired by any of the Ancient Speakers, untill after the 7th. year of King *H.8.*

The Petitions are now three, touching their Priviledges, (*viz.*)

1. First, For access unto his Majesty.
2. Secondly, For freedom of speech.
3. Tirdly, For freedom from Arrests.

As touching access unto his Majesty, it appeareth plainly they ever enjoyed this, ever when the Kings were absent from Parliament, *prout Anno 51. E.3.* The King being then sick at *Eltham*: The Speaker, *Sir Tho-*

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*mas Hungerford* declared to the Lords, that he had moved the King to pardon all such as were unjustly committed in the last Parliament, &c. N<sup>o</sup>: 87.

That the King was then sick at *Eltham*,  
*Vide* N<sup>o</sup>: xxij.

At all other times of *R. 2. Hen. 4.* and downwards, the Commons with the Speaker were admitted into the Kings presence in Parliament, to deliver their answers: And oftentimes under *R. 2. H. 4.* and *H. 6.* they did propound matters to the King, which were not given them in charge to treat of.

This request for access unto his Majesty, is first Recorded, *Anno* xxviiij. *H. 8.* to be made by *Richard Riche* then Speaker.

Then by *Thomas Moyle* Speaker, *Anno* xxxi. *H. 8.* And afterwards by all others whose speeches are in the Journalls.

The Speakers Petition for freedom of speech is not recorded, before the 33. *H. 8.* made by *Thomas Moyle* Speaker.

Neither was it ever denyed them, for the Commons would never suffer any uncomely speeches to pass of private men in their House, much lesse of the King, or of any of the Lords.

They did oftentimes under *E. 3.* discuss and debate amongst themselves many things concerning the Kings Prerogative. And

And agreed upon Petitions for Laws to be made directly against his Prerogative, As may appear by divers of the said Petitions, yet they were never interrupted in their consultations, nor received Check for the same, as may appear also by the answers of the said Petitions.

These Precedents of *E. 3.* (are the best,) he being the right Heir to the Crown, absolute in his government, and welbeloved of his people, and may be freely cited.

*R. 2.* succeeded, being very young, having froward Unckles, who were so popular that they made him very jealous of his Prerogative.

I will not alledge such precedents of his time, as prove that the Commons argued and propounded matters contrary to his Prerogative. (for they are many) But onely observe how that King did in the latter end of his reign, take notice of the Commons consultations in matters concerning the same.

The first happened in the Parliament, *An. xx. R. 2.* when the King had mastered his Unckles, and became absolute.

In this Parliament *Sir John Bussie*, one of the Kings Minions being Speaker, a Bill was exhibited to the Commons, that the great

great & excessive charge of the Kings House be amended and taken away, and against the multitude of Bishops, and Ladies in the Kings House.

No man will doubt but that *Bussie* did presently acquaint the King with this, and it was bruited also at that very time, that the King was displeased with the Commons, for that they intended to dissuade his Majesty from sending certain into *Lumbaray*, whereupon the Commons came before the King, and denied there was any such speech amongst them: And yet (though this occasions was offered by themselves) the K. took no notice of the Bill touching his House, but willed the Lord Chancellor to tell them, that his Officers should come and confer with them about weighty affairs.

At the Lords return from this conference, the King came into the Parliament House, and told the Lords that he understood that the Commons had ( in this conference ) handled some matters against his Royall Estate and Liberty, and commanded the Lord Chancellor to declare the same.

Whereupon the Lord Chancellor declared Four Bills, propounded by the Commons, whereof the fourth and last was the Bills touching the excessive charge of the Kings

Kings House, &c. which onely displeased his Majesty, and he was highly offended that the Commons who are his subjects durst presume of any Ordinance, or government of the Kings House and Person, which he commanded the Lords to tell the Commons, and to charge the Speaker to declare his name, that exhibited the Bill: And *Haxey* was condemned for a Traytor for that Bill.

By this you may see how the K. did cast about, to have this matter related unto him in the upper house, neither can it appear by any ancient Record, that the King did take notice of any of the Commons speeches, or consultations, until they were reported unto his Majesty in open parliament.

The next precedents are of *H. 4.* which are not much to be stood upon, because he was an Usurper: And therefore it behoved him to affect the love of his Commons in his time: *Annis 7. & 8.* The Speaker told him plainly in open parliament, that his House was far more chargeable, but less honourable then any of his Progenitors, and it was well taken by the King, whereas *Haxey* was condemned for a Traytor, for a lesse matter then under *R. 2.* yet some precedents of his time do plainly prove the ancient privileges

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ledges of the Commons: And therefore I will recite those Laws onely.

*Anno 2. H. 4. N<sup>o</sup>: 11.* The Commons petitioned the King, that he would not suffer any Report to be made unto him of any matter either moved, or debated amongst them untill they be concluded, nor give them any credit, whereunto the King assented.

*Anno 9. H. 4. N<sup>o</sup>: 12.* It is plain that the King is not to be tould of any thing in communication with the Commons, until it be declared by themselves, which was declared to be so upon this occasion: The Lords sent for certain of the Commons, and tould them what Subsidy they thought fit to give the King, and wished them to tell it their Companions, and to advise them to yield thereunto; unto which the Commons did justly take exceptions, and made complaint thereof unto his Majesty, and thereupon it was declared and agreed, that it is lawfull for the Lords to commune of the Subsidies by themselves: But neither the Lords nor the Commons are to make report thereof unto the King before they agreed: And then the same is to be declared by the Speaker in the manner accustomed. *Vide Chartam de immunitat. in Scheda ibidem,* If the King might  
not

not take notice of the Subsidy (about which the Lords and Commons did often confer) and being agreed, made an Indenture thereof; much less might any thing else moved amongst the Commons be reported unto his Majesty, before the Commons were fully agreed thereon, and declared the same by their Speaker, or otherwise, either unto the King or Lords.

The third Petition is for freedom from Arrests.

This Petition was never made untill of late dayes, yet this priviledge did ever belong to the Lords and Commons, and to their servants also coming to the Parliament, staying there, and returning home.

*Anno xviii<sup>o</sup>: Ed. 1<sup>o</sup>: Bogo de Clavo*, and the Prior of *Holy Trinity* in London were complained of, for that the said Prior (by procurement of the said *Bogo*) had cited the Earl of *Cornwall* in *Westminster Hall*, in Parliament time to appear before the Lord Arch Bishop of *Canterbury*, &c. whereupon they were sent for (*ad respondendum Domino Regi, & Petro de Chamen Seneschallo Regis: Walter. de Fane Comiti Mareschallo Regis, Domino Edward. Comiti Cornubie & Abb. de Westmynst: (eo quod dicta Aula est infra libertates Domini Abbat: They appeared*



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ed and Submitted themselves to the King,  
whereupon they were sent to the Tower of  
London, ( *Postea venit predictas Bogo & fin.*  
*fecit, Domino Regi pro predict. t. transgressi-*  
*one per duas Mille Marcas libras pro trans-*  
*gressione sibi facta, &c. Vide Placita Parlia-*  
*menti Anno xvij. E. 1.* in an old Manuscript  
in the Tower, and in the Plea Rolles in that  
year also, there is a Petition of the Master  
of the Temple, to have leave to distrain for  
the Rent of a House in London, (held of  
him by the Bishop of St. Davye, for that he  
could not distrain *Tempore Parliamenti.* The  
answer is, *Non videtur honestum quod Rex*  
*concedat, &c. Tempore Parliamenti, sed alio*  
*tempore distringat, &c.* And *E. 2.* sent his  
Proclamation to the Justices of Assize, *quod*  
*superfedeant ubi Barones & alii Summoniti ad*  
*Parliamentum Regis sunt presentes, Vide*  
*Claufe Anno 7. E. 2 Membr. 28. & Annis 8.*  
*E. 2. Membr. xxvij. & Annis viij. & E. 3.*  
*Membr. xxij. & xxij.*

But these Precedents prove the priviledges  
of the Lords only, the next shall of the  
Commons also, and their servants.

*Anno 5. H. 4. N<sup>o</sup>. 7. inter Petitiones Com-*  
*munitum (viz.) Item pray the Commons,*  
that whereas according to the Custom of

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the

the Realm, the Lords, Knights, Citizens, and Burgesſes, coming to your Parliament at your command, ſtaying there, and returning to their Countries, and their men, and their ſervants with them in the ſaid Parliament, under your ſpecial protection and defence, and ought not for any debate, treſpaſs, or other contract whatſoever, to be arreſted, or any way imprifoned in the mean time; and now ſo it is that many ſuch men coming to your Parliament, and others their men, and ſervants during the ſaid Parliament, have been arreſted by them, who had full knowledge that they ſo arreſted were of the Parliament as aforeſaid, In contempt of your Maieſtie, great damage of the party, & delay of the buſineſs of the Parliament: May it pleaſe you to eſtabliſh, That if any hereafter do arreſt any ſuch man coming to your Parliament as aforeſaid, or any of their men, or ſervants remaining with them in the ſaid Parliament, or any thing attempt contrary to the Cuſtom,

He ſhall make fine and ranſome unto you, and render treble damages to the party grieved, R. Y. as ſufficient remedy in the like Caſe. I have tranſlated this Petition, or Bill exhibited by the Commons, *Ad verbum,*

out

out of the Original : By this you see who are privileged (*viz.*) The Lords, Knights, Citizens, and Burgesſes, and their ſervants coming to Parliament, ſtaying and returning.

The Petition is to have the contemnners of this Priviledge puniſhed by Fine and Ranſome to the King, and treble damages to the party grieved, had ſufficient Remedy.

What Remedy this was doth appear by the Earl of *Cornwall's* caſe, *Anno xvij. Ed. iiij. (viz.)* that the party contemning the priviledge of Parliament is to be committed to priſon, to make Fine and Ranſome to the King, to render to the party grieved damages, as the Lords of the Parliament ſhall award; And to answer the Kings Steward and Marshall, if the contempt be committed within the Verge, for the wrong done to them, which is a greater puniſhment then the Commons required; And happily they know it not.

But this being the ancient Cuſtom, and done by Preſcription, The Lords thought it more honourable to retain it, then to Enact a new Law to puniſh the contempters of their priviledges, as if they had not been other

wise able to do it of themselves, or had no Remedy before, but were subject to scorn and contempt.

As the offender was punished, so the party arrested was set at liberty. And this was to notorious, that the Commons (at that time) desired no redresse therein by their Petition.

It rests to shew how the party so arrested, was set at Liberty, which shall follow: But here first occurs another Petition of the Commons, touching assaults during the Parliament, (*viz.*)

*Eodem Anno 5 H. 4. N<sup>o</sup> 78.* *Item* pray the Commons, that whereas all Lords, Knights, Citizens, and Burgeses, and their servants coming to Parliament by the Kings VVrit, in coming, staying, and retourning, are under your protection royall, and many mischiefs and Impeachments do often happen unto the said Lords, Knights, Citizens, and Burgeses, and their menial servants at those times, As by Murther, Maimes, and Batteries, by people lying in waite, or otherwise, for which due remedy is not yet provided: And namely and particularly in this present Parliament: An horrible Battery, and mischief is committed upon *Richard Chedder Esquire*, who is come to this Parliament with

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with Sir *Thomas Brooke* Knight one of the Knights for the Countie of *Somerset*, and meniall wi h him, by *John Sallage*, otherwise called *John Savage*, whereby the said *Richard Chedder* is Emblemistred and maymed even to the peril of death. That it would please you to ordain upon this matter sufficient remedy and for other such causes semblable so as the punishment of him may give Example, and terror unto others to commit the like mischief in time to come, (that is to say) if any man shall kill, or murther any that is come under your protection to Parliament, that it be adjudged Treason, and if any do maim, or disfigure any such coming under your protection that he loose his hand, and that if any do assault or beat any such so come, that he be imprisoned for a year, and make fine and ransome, to the King: And that it would please you of your special grace hereafter to abstain from charters of pardon in such cases unless that the parties be fully agreed.

R<sup>o</sup>. For that the deed was done within the time of this parliament, let a proclamation be made where the deed was done, that the said *John Sallage* appear, and render himself into the Kings Bench within a quarter of a yeare after the proclamation made

And if he doth not, let the said *John Sallage* be attainted of the said deed, and pay unto the partie endamaged his double damages, to be taxed by the discretion of the Judges of the said Bench for the time being, or by inquest if need be, and make Fine and Ransome at the Kings Will, and so likewise let it be done in time to come in like cases.

Thus far the petition of the Commons with the answer *vide* the printed book how the statute is drawn up, upon this petition and answer, *et vide Rot. Claus.* (*An: eodem constat*) that the said *John Sallage* did yeeld himself according to the proclamation.

This petition and answer may be compared to the former (*viz*) that the Lords would not discedere from the remedy due anciently by prescription, which they had for assaults as well as for arrests, only they agreed to the Commons herein to provide for him that could not be apprehended after the fact done.

*An. 23. H. 6. N°. 41. inter petitiones communium*, the Commons pray that every person being of the Lords house, or of the house of Commons, having any assaunt or affray made upon them at the Parliament, or coming or going from thence, may have the like remedy therefore as Sir *Thomas Parry* had.

R°. The statutes therefore made shall be observed; it should seem the Commons had forgotten the statute made 5 h. 4.

*Concerning a Commitment of a Peer  
of this Realm in the time of Parlia-  
ment.*

THE Earl of *Arundels* case in a Parlia-  
ment of the 6th of *February An. 1 Ca-*  
*roli Regis* will fully satisfie this point and  
therefore I will add it here at large.

The 14. of *March An. 1525.* The Earl  
of *Arundel* being committed by the King to  
the Tower of *London*, sitting, the Par-  
liament House was moved to take the  
same into their consideration, and so to pro-  
ceed therein as they might give no just of-  
fence unto his Majestie, and yet preserve the  
priviledges of Parliament.

The Lord Keeper of the great Seal there-  
upon signified to the house that he was com-  
manded to deliver this message from his Ma-  
jestie unto their Lordships (*viz*) that the Earl  
of *Arundel* was restrained for a misdemea-  
nor, which was personal to his Majestie, and  
lay in the proper knowledge of his Majestie,  
and had no relation to matters of Parlia-  
ment.

Whereupon the house was put to a Committee, and being resumed, the Lords Committees for privileges &c. were appointed to search for precedents concerning the Commitment. And the Lord chief Justice, Mr. Justice Dodderidge, and Mr. Justice Tylverton were appointed to attend their Lordships;

To meet when they please, and to report when they were ready for it, and their Lordships think fit, for the consideration of the house.

The 25 of *March* 1625 the Lord Treasurer delivered a message from the King in *hac verba (viz.)*

Whereas by a motion made *Privileges* by one of your Lordships, the Lord Keeper did yesterday deliver a message from his Majestie, that the Earl of *Arundel* was restrayned for a misdemeanor which was personal to his Majestie, and lay in the proper knowledge of his Majestie, and had no relation to matters of Parliament: his Majestie hath now commanded me to signifie to your Lordships that he doth avow the message in sort as it was delivered to have been done punctually according to his Majesties own direction: And he knoweth that he hath therein done justly and not diminished



shed the priviledge of that house.

And because the Committe appointed yesterday to search for precedents &c. had not yet made any report to the house, therefore direction of this business was suspended for this time.

The 5. of *April* the Earl of *Hartford* made this report to the house (*viz.*) the Lords Committees for priviledges met on *Earl of Hartford's Report* Munday last:

The first question that did arise amongst them was whether that proxies are of any validity which are deputed to any Peere who sitteth not in Parliament himself, and it was conceived that those votes were lost, whereupon the Committee found this trust to be deprived of five suffrages, by the absence of the Earl of *Arundel* unto whom they were entrusted, and the Committee finding by the Journal book that the Sub-committee (which was appointed to search for Precedents for priviledges concerning the Commitment of a Peer in time of Parliament had not yet made report to this house, they therefore conferring their notes of precedents together wherof they had made search they have found no one Peer to have been committed (the Parliament sitting) without tryal, or judgment of Peers of Parliament: and

and that one only precedent of the Bishop of *Winchester*, in the book Case of King *E. 3.* which was here urged cannot be proved to be in Parliament time: and this the Lords of the grand Committee thought fit to offer to the consideration of the House

*Order*

Hereupon the House was moved to give power to the Lords sub-Committees for privileges, &c. to proceed in the search of precedents of the Commitment of a Peer of this Realm during the time of Parliament: and that the Kings Council might shew them such precedents as they have of the commitment of a Peere during the time of Parliament. And that the said sub-Committee may make their report unto the House at the next access.

All which was granted and agreed unto and these Lords were added unto the said Committee (*viz*)

The Lord Treasurer

The Lord President

The Duke of *Buckingham*

The Earl of *Dorset*

The Earl of *Devon*

The Earl of *Clare*

The viscount *Wallingford*

The Lord *North*

The Viscount *Mansfield*

The

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The Kings Council are appointed to attend the Lords, they or any five of the said sub-Committee to meet on thursday in the Easter weeke, at two of the clock in the painted Chamber and afterwards when they please.

The 18 of Apr. 1626 The Lord president reported the proceedings of the Lords Subcommittees for priviledges, &c. upon the Commitment of the Earl of *Arundel* (viz) that the Kings Council had searched, & acquainted the said Lords Sub-Committees withall that they had found in Records, Chronicles, and stories concerning this matter, unto which the said Lords Sub-Committees had given full answer and also shewed such Precedents as did maintain their own rights, all which followeth in *hac verba*, &c. (viz)

*Reports  
of the sub-  
committees  
for priviledges.*

*Touching Imprisonment or restraint of  
Lords in time of Parliament.*

**U**nder E. 1. the priviledges of the Lords of Parliament was such that although the power of the Church was so great that it pretended to be scarce less then the highest temporal power, yet when *Edward Duke of Cornwall* in Parliament time was by it cited by a process from the Arch-Bishop of  
Can-

*Canterburie* which was far les then any imprisonment he recovered 1000 marks Damages against *Bogo de Clare*, that procured the citation, and both this *Bogo* and the prior of *Sanct. Trinity* that served it, were fined in great sums to the King for the contempt also against him in the citation.

The Case of the Arch Bishop *Stafford*, in the 15 *E. 3* is observable here, it appears that though he were commanded to stay from the Parliament untill he had answered certain Articles in the Exchequer touching accompt, yet by a dutifull standing on his right, he did get his place in the Houste, and so sensible were the Lords of that breach of their priviledge in that restraint of this Arch-Bishop, that they declared that none of them ought to be questioned but in Parliament, and to that purpose also an Act passed that year, though with the rest of that year it now stands repealed.

Between the Parliaments of 50 and 51 *E. 3.* *William Wickham* Bishop of *Winton* was called to an account for divers monys that he had received of the King, and some other matter, and his temporallities were seised, and by command of *John Duke of Lancaster* in the Kings name he was not to come neer the King by twenty Miles: This was in

*Mr*

*Michaelmas Term 50 E. 3. in Hillarii 51*  
 a Parliament was held where the Bishops and  
 the Clergy that then were a third state of  
 the Parliament (as they are called frequently  
 in the antient time) being present to give the  
 King a supply, made their complaint to the  
 Arch Bishop of *Canterburie* as the chief of  
 them (*de injuria illata eorum confratri et*  
*Corpor. Domino Episc Winton, et quomodo non*  
*solum sibi met sed omnibus illis est et toti li-*  
*bertati Ecclesie derogatum, unde constanter as-*  
*seruerunt se de instantibus Negotiis nullatenus*  
*effectualiter tractaturos donec quoad uniantur*  
*singula Cleric. membra, affirmant revereri in-*  
*flans negotiandum cum illis comunicetur tan-*  
*re, et quod omnes tangeret debere. ab omnibus*  
*approbari.*) And although the Arch-Bishop  
 willing to have declined the meddling with  
 their suite, (being on the Dukes partie) yet  
 he was so far urged by them that at length  
 he sent for him to come and take his place  
 amongst them, as he did also; notwithstanding  
 no writ of Summons appears to have bin  
 sent to him by that Parliament, the presence  
 of all the Lords was thought by the house  
 of Commons to be so necessary, and a mat-  
 ter wherein they had such interest, that they  
 desired that all the Lords that were absent  
 might be sent for: But it was answered that  
 it

it would be too long a delay of the Parliament, but such as were neere should be sent for: The Lord Grey of Ruthin being imprisoned by Owen Glendor of Wales, the Commons conceived they had so much interest in the presence of every Lord there, that they petitioned the King to give the Lords of Roose, and VVilloghby leave to provide his ranfome which was 10000 Marks which was granted.

A bill passed both the houses in the 5. b. 4. wherein it is affirmed that according to the Custom of the Realm the Lords, Knights, Citizens, and Burgessees and their servants coming to the Parliament and there staying and retourning home again, ought not to be arrested or in any manner imprisoned in the ean time for any debt, accounts, trespass, or other contract whatsoever. It was desired that if any did offend against the priviledge, he should suffer fine and ransom, and pay treble damages: But the Kings Answer is that they had sufficient remedy in *le cas*, for there was no doubt made of the Priviledge though a desire were of a greater Remedy then the law had yet provided:

The Commons the 8 b. 6. in their bill for Lark a servant of Mr. Milred a Burgesse of Parliament (which passed both houses of Par-

Parliament) affirm that the priviledges of Parliament were cleere that no Member was to be arrested in Parliament time, But for Treason, Felony, or surety of the peace.

It was resolved upon great advice, 31. H. 6. that no member was to be arrested, saving in cases of Treason, Felony, breach of the Peace, or upon a condemnation had before the Parliament, which (as the Law is to this day) must be understood of an arrest of a Commoner, upon an execution before his time of priviledge in Parliament: in the xxxij. H. 8. The King himself in his speech touching *Ferrers Case* (that being a Burgesse was taken in Execution) but discharged by Order of the Commons House) saies, that his learned Council had enformed him, that all Acts and Procelse, coming out of any other inferiour Courts, must for the time cease and give place to the Parliament, as the highest, and that whatsoever offence or injury is in Parliament time offered to the meanest Member of the House, is to be adjudged as done both against the King, and the whole Court of Parliament.

And the chief Justice *Sir Edward Mountague*, and the rest of the Judges confirmed with divers reasons all that the King said to that purpose.

Touching

Touching a Lord at the sute in the *Star Chamber*, for a contempt or ryot, &c. yet the sute is to be stayed, &c. by priviledge in Parliament time.

*Precedents alledged by Mr. Attorney Generall, to prove, that a Lord of Parliament may be committed in Parliament time, for a personal Offence done to the KING, though it be neither Treason, Felony, or breach of the Peace.*

*1. Presid.* **P**hilip Earl of *Arundell*, was committed and not for Treason, sitting the Parliament, Anno 28. *Eliz.* For which Mr. Attorney cites *Cambden* in the first part of his History of Queen Elizabeth.

This Parliament began the 39. of *Octob.* on which day the Earl was not present; *ultima die Octobris* he was present, when the Speaker was presented, and then the Parliament continued unto the 4th. of November following, and then the said Earl was not present, nor the 5. 7. 8. 9. nor 10<sup>th</sup> of that November, though his name is inserted in the list of the Lords.



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All the other days of that Session, which continued to the 2d. of *December*, the said Earls name is omitted; and then the Parliament is continued till the 15th. of *February* following, on which day the Parliam. began again, and in all that Journall the said Earls name is omitted.

*Answers to the Precedent alleadged by  
Mr. Attorney in the Earl of Arundels Case, 28 Eliz.*

**C***Ambden*, out of whose Annals the Case is cited, saith expressly, that after the Parliament was ended, the Earl proposing to go beyond the Seas, wrote a long Letter to the Queen, complaining of the malice of his Enemies, and of the misfortune of some of his Ancestors that had suffered in this state, and touching also the liberty and exercise of his conscience which he meant to gain himself in other Countreys where the Roman Catholique Religion was exercised; which Letter he meant should have been delivered after his passage over: But his purpose being discovered, he was taken in *Sussex* while he was entring on his Journey, and thence brought back, and thence committed

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to

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to the Tower: And for the omitting of his name in the Journall book, on many dayes of the Parliament of 28 *Eliz.* that is no proof at all of his being committed in the time of Parliament, for there are omissions of Lords names in divers days of the Journal very frequently, when yet without question they were committed.

The Earl of *Hertford* was committed to the Tower by 2 *Freed. Qu: Eliz. Anno 5.*

That the commitment was in Parliament time, he alleadged, that the Parliam. began the 22. of *January*, Anno 5 *Eliz.* and continued untill the 10th. of *Aprill*, thence proroged to the 2d. of *October*, thence by many prorogations unto the 30 of *Septemb.* Anno 8 *Eliz.* and averred that the said Earl was committed (not for Treason, &c.) during the prorogation. To prove this, he cited *Cambdens Annals* in English.

*The Earl of Hertfords Case,*  
Anno 5 *Eliz.*

*Ans. 2.* **T**He Earl of *Hertford* was committed long before the 5. of *Eliz.* as appeareth by *Cambdens Annals*, where be placeth both his commitment, and his

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his censure in the Star-chamber about the beginning of 1562. that is in the 4th. of *Elizabeth.* beginning not till the 22th. of *January.* it is plain that he was both committed, and censured.

*Fisher Bishop of Rochest.* com- 3 *Preced.*  
mitted in Parliament-time, *Anno*  
25 of *H. 8.* for his opinion to maintain the  
Popes supremacy, which was not Treason  
by statute untill the year following: For  
this he cited *Martins Chronicle, Vide Parli.*  
*Anno 25 of H. 8.* that the said Bishop of  
*Rocheſter* was not present all that Parliam.  
as appeareth by the Journal.

*The Case of Fisher Bishop of Rocheſter,*  
*Anno 25 H. 8.*

**T**His Bishop, though all were granted to  
be true that *Martin* saith of him, was  
not committed in the time of Parliament,

But after the Parliament ended, and that  
both for misprision of Treason, and for  
Treason.

First, one of his offences is supposed to  
have been the denying to take an oath of Su-  
premacy ordained by the statute of 25 *H. 8.*  
Cap. 222. for the defence of that Act, "the  
refusall whereof was misprision by the same  
Act.

But the first time this Oath was offered to any man was the very first day of the Parliament, that is the 30<sup>th</sup> of *March* when the Form of it was made, and remains yet in the Journall of that year, so that his refusall of that Oath must be either on the very last day, on which it seems it was not: Because he is not mentioned in the Journal to have been there present, or after the end of the Parliament; for before that time never was any man put to swear that Oath.

Secondly, to this offence is added in *Martin*, that he contested, and protested against the Act of Parliament touching the dissolution of the Marriage of the Queen *Katherin*, and the confirmation of that with Queen *Anne*, for which he was committed, and suffered as a Traytor: But untill a moneth after the Parliament, it was not treason to do any Act against the second Marriage, as appeareth in the body of that statute: And after the moneth ended, that is from *May* following, it was by that statute made Treason to do any Act in derogation of it: so that neither his misprision of Treason, nor his Treason for which *Martin* saith he was committed, nor his commitment could fall in the time of the Parliament; nor doth *Martin*, nor any other say so, nor doth the Journall

Journall that hath not his name in that parliament prove any such matter, for in that very Journall divers Lords names are often omitted, that no man can conceive stood there at that same time committed, yet perhaps there was reason enough to have committed him in the Parliament time also, for he stood then very much suspected of Treason, as we may see by the Act of the said Parliament, wherein he was attainted of misprision of Treason.

But the truth of the Case is, that the Relation of it in *Martin* is false here, as it is delivered, and 25 H. 8. c. 4. divers mistake it, that wrote before him, this Bishop was not condemned that year at all, for ought appears not committed, but in 26 H. 8. he was attainted by Act of Parliament of misprision for refusing the oath, and thereupon committed; and in the 27th. year of H. 8. he was attainted for speaking trayterous words against the Stat. of 26 H. 8. Cap. 13.

*An:* 28 H. 6. the Duke of *Suffolk* being 4 *Praced* accused by the Commons of Treason, put himself upon the Kings grace, and not upon the Peers, and the King alone judged him, but required that a protestation might be entered to save the priviledge of their parage.

**The Duke of Suffolk's Case, in  
Anno xxviiij. Hen. 6.**

*Ans. 4.*

**I**N that Case, for so much as concernes Commitment, (which is the onely question now agitated) it appears expressly, that when it was in question, (before the particular accusations that the Commons put up against him) whether he should be committed by reason of a generall fame raised against him, the Lords onely determined, that he ought not yet to be committed.

Rot. Par-  
liament,  
18 H. 6.  
Act. 16.

Afterwards the Commons accused him in particular, that by his Invitation, the French King was ready to invade the Realm. At the request of the Commons, it is said he was committed to the Tower; but the Roll mentions not by whom: But howsoever, there is nothing in that Proceeding concerning Commitment, that shews he was at all committed for any less offence then Treason. And before the charge of Treason laid against him, the Lords alone determined, whether he should be committed or no. Afterwards, the Commons put in two bills of Accusation against him, one of di-

vers

vers Treasons, the other of offences of like nature. And he is by Writ brought from the Tower to answer; and then desires copies of the accusations, which are granted him: And the King, by advice of all the Lords, then committed him to the Award of three Esquires, to be kept in a Tower at *Westminster*. Ibid. 48.

Now for the Kings judging of him in time of Parliament, which is the point objected, the Case goes on thus:

The 13 of *March*, which was four days after, he made his answer to divers particulars, the King and the Lords sitting in Parliament.

The 14 being *Saturday*, the Chief Justice, by the Kings commandment, remembered all the Lords of what was done the day before in this matter, and asked, what advice they would therein give to the King. At which time, they deferred their advice until the *Munday* following: But on *Munday* following nothing was done; and on *Tuesday*, the King sent for the Lord Chancellour, and all the Lords that were in Town, to his Palace at *Westminster*; and when they were all assembled, he sent for the Duke also, who came and denied divers of the offences, and submitted himself wholly to the Kings Ibid. A.C.  
50.52.

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Rule and Government, to do with him as  
he list.

Ibid. A. R.  
50. & 52.

Thereupon the Lord Chancellour, by the  
Kings Commandment, told him, That he  
conceived that the Duke not putting him on  
his Parage, had submitted himself wholly  
to the Kings Rules and Governance; where-  
fore touching the Treason, the King held  
him neither clear nor guilty. And touching  
the other offences, the King by force of his  
submission (as the words of the Roll are)  
by his own advice, and not reporting him to  
the advice of his Lords, nor by way of  
Judgement (for he is not in place of Judge-  
ment) putteth you to his Rule and Govern-  
ance (that is to say) that you before the first  
of *May* next coming, shall absent your self  
out of this Realm of *England* for five  
years, &c.

And instantly upon this so sayed by the  
Chancellour, the Viscount *Beaumont* on  
the behalf of all the Lords, and by their ad-  
vice, assent and desire, declared, That this  
that was so decreed and done by him, con-  
cerning the person of the said Duke, pro-  
ceeded not by their advice and counsel, but  
was done by the Kings own Demeanance and  
Rule, and desires that this may be entred in  
the Parliament Roll, with this Protestation,  
That



That it should not be; nor turn in prejudice nor derogation of them, or their posterity; but they may have, and enjoy their liberty and freedom in case of their Parage hereafter, as freely and largely as ever they, or any of their Ancestors or Predecessors had and enjoyed before his time.

Upon this it is now objected, that the King here judged him, and the Lords demanded him not. But it is first plain, that it is no judgement at all: The Chancellour says expressly, it was neither by way of judgement, nor in place of judgement.

Secondly, A judgement could not be so given against him, neither was it any legal banishment; for by the ordinary course of the Common Law, there is no punishment by banishment; and that which hath been in examples, hath been by judgement given in Parliament; as appears in that famous case of the Dukes of *Hereford* and *Norfolk*, under *R. 2.* and others at that time. And

for the Lords demanding him, there was no need at all or colour why they should have demanded his person, for he was not restrained from them. He was extrajudicially absented himself, onely out of the Kingdom, and of his own will to obey the King; which while he was about to do, he was taken

Rot. Judic. 21.  
R. 1. part.  
5. Act. 18.  
Rot. Judic. 11. R.  
2. &c.

taken upon the Sea, and there slain; and for the matter of judgement and proceeding against him, which should otherwise have been before the Lords against him, they sufficiently saved their right, by protesting first, that all that was done to the Duke by the King, was onely by the Kings own De-meanance and Rule, and that this should not prejudice their right of Parage, or their (*ius Paritatis*) which is their right of judgement as Peers, as it is called in the Protestation of the Clergy, when they left the house, because they would not be party to the judgement of blood, in the 11 R. 2.

*Preced. 6.* Anno 8. H. 6. the Commons petitioning for the discharge of *William Lark*, arrested in Execution during the Parliament, and that the King would be pleased also to ordain, That no Lord, Knights, Citizens and Burgessees, nor their servants, coming to the Parliament, may be arrested during the Parliament, unless it be for Treason, Felony, or breach of the peace. The King granted the first part of their petition, but (*quans ad Remnant le Roy s'adviseva.*

*The Case of Lark. Rot. Parliaments,  
Anno 7. H. 6. n. 59.*

*Ans.* **T**O this the Answer is full, that the latter part of the Bill doth comprehend more then it was fit the Royal Assent should have been given unto, and more then was, or at this day is the Law of Parliament.

For it is, that no Member of either House, be arrested or detained in prison during the Parliament, saving in these three cases. To be arrested, is to be taken with Officers by Process, or otherwise.

To be detained in prison, is to be detained after an Arrest, though in truth it be none: So that the Bill is desired, not onely that none should be arrested or detained upon Arrest during the Parliament, which is the onely priviledge supposed in the body of the Bill; but also, that none should be detained in prison during the Parliament; whereas there is no doubt, but that any of the House of Commons, or their servants, or the servants of Lords being detained in prison, upon an Execution served upon them, before the time of priviledge of Parliament; or being in Execution by any other ordinary

ordinary course of Justice before that time, ought to be detained still, as it is practised still at this day. And accordingly also a fourth Limitation is added to those three in the 13 *H. 6.* in *Thorps Case*, where Treason, Felony, Surety of the peace, and condemnation before the Parliament, are the causes excepted; so that there being more asked by the Bill, then the priviledge of Parliament allowed, there was reason enough why the King assented not unto it.

**Preced. 4.** And 1 *H. 4.* the Bishop of *Carlisle* was arrested by the Lord Marshal in Parliament time, and not for Treason &c. for he was committed to the Abbey of *S. Albans*, which was no prison for Traytors.

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*The Commitment of the Bishop of  
Carlile in Parliament An. 1 b. 4.*

*Answer.* **T**HIS Bishop was committed for as high treason as could be uttered, for he expressly denied *H. 4.* to be a King in open Parliament. And for this being committed to the Abby of Saint *Albans* that or any place without question at the pleasure of the King was a prison for Traytors as well as others :

*An. 5. b. 4.* the Lords of parliament claimed their priviledge to judge the Earl of *Northumberland* in respect of the statute of *25 Ed. 3.* and not in respect of priviledge of Parliament. *7 President*

*The Earl of Northumberlands Case*

*Anno 5, H. 4*

*7 Answer* **T**H E Lords in that Case expressly claim and exercise their 'right of judgment both in matter of treason, and then the statute against liveries, thereupon they judge the Earls offence not to be Treason nor Felony, but they judge also that it was trespass only, and for that they judge also that he ought to

to make Fine and Ransom at the Kings will so that upon the one statute as Judges in Parliament, they judge the fact to be no treason, and the iteration of their being Judges of Parliament, in this Case in the Roll is an expresse mention and claim of their privilege also.

*An. 15 E. 3.* the King denied the Arch-  
**8 Preced.** Bishop of *Canterbury* to come into the Parliament house until he had answered certain Answers objected against him in the Exchequer, and then also the King denied his entrance, yet at last at the intercession of the Lords he was admitted.

For this Mr. Attorney cited *Mathew Parker de Antiquitate Ecclesie Britanniae.*

*The Case of the Arch-Bishop of Canterbury Stratford An. 15 E. 3.*

**8 Answer.** **I**T is true that the King denied him sometimes to come into the house untill he had answered those Articles, but he did as upon challenging of his right as a Peer, and a Baron of the Kingdome, come in before he had answered them, and so well he understood the right of *Pairalty*, that though the Parliament-House doore was shut against him, where

*Antiqui.  
 Ecclesie  
 Brit. et God  
 win in vita  
 ejus.*

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where he was kept out by violence, he yet stood there, and professed he would not thence until he was either suffered to come in, or els some cause were shewed why he should not; and what the Lords thought of his being kept out of the house, or questioned in any other Court sitting the Parliament may appear in the Roll of that year, where while he was kept out; they desired the Law to be declared touching questioning of Peers in any other Court but in Parliament, and thereupon a Committee of 12 Lords was made to examine in what Case Peers should be found to answer in Parliament and not elsewhere. And the Committees report is general (*que les Paires de la terre ne devient estre arestez ne mesnez in judgment si non en Parliament et per leur pairs*): And the same day that this was reported, the Arch-Bishop came into the House, where he desired of the King that he might be tryed, which the King granted.

An. 3. E. 3. *Termino pasce.* the Bishop of Winchester was indicted in the Kings bench for departing from the Parliament at Salisbury.

The

*The Case of the Bishop of Winchester*  
*Anno. 3. E. 3.*

*Answer.* **T**His was the same *Stratford* that was Arch-Bishop of *Canterburie*, and in that Case of 15. E. 3. but it is plain that the whole proceedings against him was after the Parliament from whence he departed: The Parliament was kept at *Salisburie* ( not *Salop* ) as it is false printed in the year books, and beginning in *quinden. Michaelis* it ended 31 *Octobris* following as appears by the Writs for levying the expences of the Knights and Burgeses.

*Dors claus.*  
*An. 2. E. 3.*  
*Memb. 15.*

And the next Parliament is summoned by Writ dated the 14 of *June* 5. E. 3. now E. 3. began his Raigh the 25 of *January*, so that from the 31 *October* in the 2 E. 3. to the 14 *Junii* in 3. E. 3. there was neither Parliament held nor any summons sent forth; in that time falls *Easter Term* wherein the Bishop of *Winton* was questioned in the Kings bench as appears both in the year book, and the Roll of the Case, so that it proves nothing at all to the point in question, being done out of Parliament.

*Dors claus.*  
*An. 2. E. 3.*  
*Memb. 19.*  
*Pasch. 3 E*  
*3. fol. 9. et*  
*Pasch. 3. E*  
*3. Coram*  
*Rege &*  
*Rex Mem.*

This being read it was agreed upon the que-



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by the whole house (*nemine dissentiente*) that the priviledge of this house is, that no Lord of Parliament, sitting the Parliament or within the usual times of priviledge of Parliament, is to be imprisoned, or restrained without sentence or order of the house, unless it be for Treason or Felony, or for refusing to give surety of the peace. Question

And it was hereupon ordered that the said Lords sub-Committees for priviledges &c. or any five of them shall meet this afternoon to consider of a remonstrance of the priviledges of the Peers of Parliament, and of an humble petition to be made unto his Majesty to enjoy the same. Order.

The Lord president reported the remonstrance and petition of the Peers concerning the claim of their priviledges from Arrests and Imprisonments during the Parliament, which was conceived by the Lords sub-Committees of priviledges according to the order of the house 18 of *April*, the which was read 1. & 2. *vice in hac verba* (viz.) Priviledges of Peers

*The Remonstrance and Petition  
of the PEERS.*

**M**AY it please your Majestie, we the Peers of this your Realm now assembled inparliament finding the Earl of *Arundel* absent from his place that sometimes in this Parliamt sat amongst us, his presence was therefore called for; but hereupon a message was delivered unto us from your Majesty by the Lord Keeper, that the Earl of *Arundel* was restrained for a misdeamenor which was personally to your Majestie, and lay in the proper knowledge of your Majestie, and had no relation to matter of Parliament: this message occasioned us to enquire into the acts of our Ancestors, and what in like cases they had done, that so we might not err in any dutifull respect to your Majestie, and yet preserve our right, and priviledge of Parliament: and after diligent search both of all stories statutes and Records that might inform us in this case, we find it to be an undoubted right and constant priviledge That no Lord of Parliament, sitting the Parliam. or within the usuall times of priviledge of Parliament, is to be imprisoned or restrained (without sentence, or order of the house,

un-

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unless it be for Treason or Felonie, or for refusing to give security for the peace: and to satisfie our selves the better, We have heard all that could be alleaged by your Majesties learned Councel at law, that might any way intringe or weaken this Claim of the Peers and to all that claim be shewed and alleaged, to full satisfaction hath been given as that all the Peers in Parliament upon the question made of this privilege, have *una vice* consented that this is the undoubted right of the Peers, and inviolably have been enjoyed by them: wherefore we your Majesties loyal subjects and servants the whole body of the Peers in Parliament assembled, most humbly beseech your Majestie, that the Earl of *Arundel* a Member of this body, may presently be admitted with your gracious favor to come, sit and serve your Majestie, and the Commonwealth, in the great affairs of this Parliament, and we shall pray, &c.

This remonstrance and petition being read, it was generallie approved of by the whole house and agreed to be presented unto his Majestie by the whole house:

And further agreed that the Lord President, Lord Steward, the Earl of *Cambridge* and the Lord great Chamberleyn should pre-

sently go to the King, to understand his pleasure, when they shall attend him.

And the said Lords being returned, The Lord president reported, that his Majesty had appointed this day between two and three, for the whole House to attend his Majesty, with the said Remonstrance and petition in the Chamber of presence at *Whiteball*.

And it was agreed that the Lord Keeper should then read the same unto the King, and present it unto his Majesty.

The 20. of *Aprill*, 1626. the Lord President thus reported the Kings Answer unto the Remonstrance, and Petition of the Lords delivered unto his Majesty.

The Kings  
Answer.

My Lords,

**Y**E have spent some time in this business, and it being of some consequence, I should be thought rash, if I should give a sudden Answer; And therefore I will advise of it, and give you a full Answer in convenient time.

Priviledged.  
es.

The xx. of *Aprill*, 1626. This day the House was called, and the Earl of *Arundell* being called, the Lord Keeper signified to the house that his Majesty hath taken into his consideration, the Petition exhibited by their Lordships.

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ships, the xix. of *Aprill*, concerning the Earl of *Arundell*, and will return answer thereunto with all expedition.

The 2. *Maij*. 1626. it was this day ordered the Lord Keeper do move his Majesty from the House for a speedy and gracious Answer unto the petition, on the behalf of the Earl of *Arundel*. Order.

The fourth of *May*, the Lord Keeper signified unto their Lordships, that according to the order the second of *May*, he had moved his Majestie from the House, on the behalf of the Earl of *Arundel*; who answered, That it is a cause that he hath had a great deal of care of, and is willing to give your Lordships satisfaction, and hath it in his consideration how to do it, but hath been interrupted by other businesses, wherein Mr. Attorney hath had much occasions of conference with him (as your Lordships are acquainted) but will with all conveniency give your Lordships satisfaction, and return you an answer. The Kings  
second  
Answer,  
upon n-y  
Lord  
Keepers  
Motion.

The nineteenth of *May*, 1626. the House being moved to petition the King touching the Earl of *Arundel*, these Lords were appointed to set down the form of the said petition; viz. Priviledg.  
cs

The Lord President.

The Earl of *Essex*.

The Bishop of *Norwich*.

The Bishop of *Coventry and Lichfield*.

The Lord *North*.

The Lord *Rassel*.

The Lord *Denny*.

The Lord *Montague*.

Who reported the same in writing as followeth.

a Petition  
of the  
Lords.

May it please your Majesty,

**W** Hereas the whole body of Peers now assembled in Parliament, did the 19 of April exhibite to your Majesty an humble Remonstrance and Petition, concerning the priviledges of Peers in Parliament, and in particular, touching the Earl of *Arundell*, whereupon we received a grations Answer, that in convenient time we should receive a full Answer, which we have long, and dutifully attended; and now at this time so great business being in handling in the House, we are pressed by the business, to be humble suitors to your Majesty, for a grations and present Answer.

Which

Which being read, was approved by the House, and the said Committee appointed to present the same unto his Majesty, from the House, at such time as the Lord *Chamberlain* shall signifie unto them that his Majesty is pleased to admit them to his presence.

The 21. of *May* 1626. the President reported the Kings Answer unto the petition, from the House touching the Earl of *Arundell* (viz.)

My Lords, I did little look for such a Message from the House, I have been of the House, and did never know such a Message from the one House to the other: Therefore when I receive a Message fit to come from you to your Sovereign, you shall receive an Answer.

The Lord President further reported, that the Lords Committes, appointed to deliver the said petition unto the King, did thereupon withdraw and required him (the Lord President) humbly to desire his Majesty to be pleased to let them know, unto what poynt of the said Petition he takes this Exception.

And that his Majesty willed him the said Lord President to say this of himself, (viz.)

The exception the King taketh is at the peremptorinesse of the Termes, (to have a present Answer) and the King wonders at their inspatience, since he hath promised them an answer in convenient time.

Hereupon the House altered their former Petition, leaving out the word (present,) and appointed the former Committee, humbly to deliver the same to his Majesty, at such time as the Lord *Chamberlain* shall signifie unto them, when his Majesty will be pleased to admit them to his presence.

The 14. of *May* 1626. The Lord President reported the Kings answer unto the petition of this house concerning the Earl of *Arundell*, (viz )

The Kings answer unto the Petition, as it was altered.

It is true, your word (present) was somewhat strange unto me, because ye do not use it from one house to another : But now that I know your meaning, you shall know this from me, that you shall have my Answer so soon as conveniently I can : And this I will assure you, it shall be such an answer, as you shall see I will not trench upon the priviledges of your House.

The 17. of *May*, 1626. Their Lordships being moved to renew their humble petition to the King from the whole House, on the behalf of the Earl of *Arundell*, these Lords



Lords were appointed to draw up the said Petition (*viz.*)

The Lord President.

The Lord *Chamberlain*.

The Earl of *Dorset*.

The Earl of *Devon*.

The Earl of *Mulgrave*.

The Viscount *Saye*, and *Seale*.

The Lord *North*.

Who having penned and reported the same to the House, it was read in *hac verba*, (*viz.*)

May it please your Majesty, the cause that moves us now humbly to attend your Majesty in one whole body (as at first we did) is because we observe that the house of Commons have speedily received a member of theirs being committed; we the Peers ambitious to deserve of your Majesty & to appear in the eye of the World as much respected in our rights and priviledges as any peers or Commons have ever been, acknowledging you a King of as much goodness as ever King was, do now again humbly beseech that the Earl of *Arundel* a member of our house  
may

may be restored to us it so much concerning point of priviledge, as that we all suffer in what he suffers in this his restraint, which petition was generallie approved of, and ordered to be presented at such time as the Lord Chamberlain shall signifie his Majesties pleasure to admit their Lordships to his presence.

The 19th. of *May* 1626 the Lord Chamberlain signified to their Lordships that his Majestie is pleased that this house attend him at two of the clock this afternoon at *Whitehall* the 19 of *May* 1626. his Majesties answer unto the Petition of the house concerning the Earl of *Arundel* the 19 of *May* at *Whitehall* is reported (*viz*) his Majestie is pleased to admit them to his presence.

The Kings Answer, My Lords I seethat in your petition you acknowledge me a King of as much goodness as ever King was, for which I thank you and I will endeavour by the grace of God never to deserve other : But in this I observe that you contradict your selves, for if you be leive me to be such as you say I am, you have no reason to mistrust the sincerity of my promises, for whereas upon often petitions made by you to me concerning this business I have promised to give a you full answer with  
all

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all convenient speed, by this again Importuning me, you seem to mistrust my former promises. It may be said here is an emergent cause, for that I have delivered a Member of the lower house, in this my Lords by your favour, you are mistaken, for the Causes do no waies agree, for that he that was committed of the house of Commons was committed for words spoken before both houses, which being such as I had just cause to commit him, yet because I found that they might be words only misplaced, and not ill meant, and were so conceived by many honest men, I was contented upon his interpretation to release him without any fate from the lower house; whereas my Lord of *Arundels* fault was directly against my self having no relation to the Parliament: yet because I see you are so impatient I will make you a fuller answer then yet I have done, not doubting but that you will rest contented with that. It is true, I have Committed him for a cause which most of you know and though it hath been no more I had reason to do it, yet my Lords, I assure you I have things of greater importance to lay to his charge, which you must excuse me not to tell you at this time, because it is not yet ripe, and it would much prejudice my service to  
do

do it, and this, by the word of a King, I do not speak to delay you, but as soon as it is possible you shall know the cause, which is such that I know you will not judge to be any breach of your priviledges, for my Lords by this I do not mean to shew the power of a King in diminishing of your priviledges,

Order. This being read again it was ordered the Committee to meet on Munday next at two of the Clock *Post Meridiem* and consider how further to proceed with dutifull respect to his Majestie and yet so as it may be for the preservation of the priviledges of the Peers of this Land, and the liberties of the house of Parliament.

Report. The 24 of *May* 1626 the Lord president reported the petition agreed on by the Lords Committees for priviledges, &c to be presented unto the King which was read in *hac verba* (viz).

4 Petition May it please your most excellent Majestie, what ever our care, or desire is to preserve our right of peerage, yet it is far from our thoughts either to distrust, or to presse any thing that stands not with the affection and duty of most loyal and dutifull subjects: and therefore in all humilitie we cast our selves before your Majestie assuring our selves, in that sacred word of a King, that  
with

with all possible convenience, your Majestie will please either to restore the Peere to his place in Parliament, or expresse such a cause as may not infringe our Priviledge.

Which was generally approved of, and ordered to be presented to his Majestie by the whole house, and the Earl of *Carlile* and the Lord *Caleton* to go presently, and know the Kings pleasure when they shall attend his Majestie. Order.

Who being returned, reported that his Majestie had appointed this afternoone at two of the Clock for the same.

The 25 of *May* 1626. the Lord keeper delivered the Kings answer unto the petition of the house yester day at *Whitehall* to be read, which followeth in *hac verba* (viz)

*My Lords* your often coming to me about this business made me somewhat doubt ye did distrust me, but now since I see you rely wholly on me, I assure you that it shall prevail more upon me then all importunities, and if ye had done this at the first, I should have given ye content, and now I assure ye, that I will use all possible speed to give you satisfaction, and at the farthest before the end of this Session of Parliament The Kings Answer

This being read the second time, the house was moved that all business might be layed aside

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aside, and consideration might be had how  
their priviledges may be preserved unto po-  
sterity, and the house being put into a Com-  
mittee for the freer debate thereof and after-  
wards resumed, it was ordered the house to  
be adjourned till to morrow and all busines-  
ses to Cease.

3 Message  
from the  
King.

The 26: of *May* 1626. the Lord Kee-  
per delivered this messuage from the King;  
*viz.*

His Majestie hath willed me to signifie  
unto your Lordships that he doth marvail  
that his meaning in his last answer should be  
mistaken, and for the better cleering of his  
intention hath commanded me to signifie un-  
to your Lordships his further answer, which  
is that your Lordships last petition was so ac-  
ceptable to his Majestie, that his intent was  
then and he is still resolved to satisfie your  
Lordships fully in what you then desired.

It is ordered that all busines be adjour-  
ned till this day seavennight.

And *memorandum* that the Duke of *Buck-  
ingham* began to signifie unto their Lord-  
ships that he would declare his desire to  
have the Kings Council allowed him to plead  
his cause: But the Lords would not hear  
him, because they would entertain no busi-  
ness and so the house was adjourned to the  
second of *June*.

*Veneris*

*Veneris* the second of *June* 1626. the Lord Keeper delivered a message from the King in *hac verba*, &c.

His Majestie hath commanded me to deliver to your Lordships a Message touching the Earl of *Arundel*, that his Majestie hath thought of that business, and hath advised of his great and pressing affairs which are such as makes him unwilling to enter into dispute of things doubtfull, and therefore to give you clear satisfaction touching that case whereby you may more cheerfully proceed in the business of the house, he hath endeavoured as much as may be to ripen it, but cannot yet effect it, yet is resolved that by *Wednesday* (which was the 14 of *June*) seavennight at the furthest, he will either declare the cause or admit him to the house, and addeth further upon the word of a King; that if it shall be sooner ripe, which he hath good cause to expect, he will declare it with the soonest, & further that if the occasion doth him enforce to stay to the time prefixed yet, he doth not purpose to set such a short end to the Parliament; But that there shall be an ample and good space between that and the end of the session, to dispatch affairs.

The Kings  
Message

This message being delivered, the house was adjourned ( *ad libitum* ) and put into a Order.

Com-

Committee, and being resumed it was agreed all other businesses to cease, but this of the Earle of *Arundels* concerning the privileges of the house, and the house to meet thereon to Morrow morning and to be put into a Committee to consider thereof; and so the house was adjourned to the next day.

*Sabathi 3 die junii 1626.* The Lord Keeper delivered a message from the King to this effect (*viz*)

A Message  
from the  
King.

That in the matter concerning the Earle of *Arundel*, his Majestie hath been very carefull and desirous to avoid all jealousie of violating the priviledges of this house, that he continueth still of the same mind, and doth much desire to find out some expedient way, which might satisfie your Lordships in point of priviledge, and yet not hinder his Majesties service in that particular; but because this will require some time, his Majestie (though his great affairs are instant and pressing) is unwilling to urge your Lordships to go on therewith, till his Majestie hath thought on the other, and therefore hath commanded me to signifie his pleasure, that his Majestie is contented your Lordships adjourn the house untill thursday next, and in the mean time his Majestie will take this particular business into further consideration it



is agreed the Lord-Keeper render unto his Majestie from the house their humble thanks for his gracious respect unto their priviledges: and then the Lord Keeper demanded of the Lords whether their Lordships would adjourn the house untill thursday, whereupon it was agreed by the Lords, and the house was adjourned, and all businesse to cease, unto the said Thursday.

For is 8 die Junii 1626 the Lord Keeper delivered this message to the Lords from his Majestie (*viz*) that on Saturday last his Majestie sent word to the house that by this day he would send them such an answer concerning the earl of *Arundel*, as should satisfie them in point of priviledge, and therefore to take away all dispute, and that their priviledges may be in the same estate as they were when this Parliament began, his Majestie hath taken off his restraint of the said Earl, whereby he hath liberty to come to the house: The Earl of *Arundel* being present did render his humble thankfulness unto his Majestie for his gracious favour unto him, and gave their Lordships also most hearty thanks for their often intercessions for him unto the King, and protested his loyalty, and faithfull service unto his Majestie.

*How the parties arrested have been set at Libertie.*

**A**N. 8. H. 6. no 5. 7. *William Lark* servant unto *William Wildred* a Burgesse of Parliament, being arrested and Imprisoned in the Fleet upon an Execution out of the Kings Bench, upon complaint made thereof by the Commons, the King by the advice of the Lords, at the request of the Commons, and by consent of the Plaintiff, ordered the said *William Lark* to be delivered out of prison: And that after the end of the Parliament, the plaintiff shall have execution again by Process, as if there had bin no execution had before.

*An. 31. H. 6.* the Parliament began at *Reading 6 March* and continued untill the 18 day of *March*, and then after divers prorogations it began at *Westminster* the 14 of *February* following; in the interim of the prorogation in *April*, and the access the 14 of *February* following, *Thomas Thorpe* the Speaker is arrested in execution at the suite of the Duke of *York*, the Commons made request to the Lords for their Speakers libertie, the Lords demanded the opinion of the Judges (touching the arrest in time of  
Pro.

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Prorogation, and denied him his libertie, whereupon the Commons were commanded to choose a new speaker

*Anno. 39 H. 6. no. 9: Walter Clarke of Chippingham*, in the County of *Wilts* being committed to the Fleet for sundry condemnations, as well to the King as to others, is discharged and set at libertie out of the Fleet at the petition of the Commons to the King and Lords, and that without bail or mainprife.

*Anno. 12. E. 4.* at the petition of the Commons, *William Hide* a Burges of *Chippingham* in *Wilts*, being in execution in the Kings bench, is delivered by a Writ out of the Chancery, saving the Plaintiffs right to have execution again, after the Parliament ended no. 55.

*An. 17. E, 4. no. 35.* it is enacted that *John Attwill* a Burges for *Exeter* being condemned during the Parliament in the Exchequer upon 8 several informations, by the pursute of *John Taylor* of the same Town, shall have as many writs of *superseas* therefore, as he will until his coming home.

Here ariseth a doubt whether the party priviledged might be delivered out of the execution without an Act of Parliament, that is without the consent of both Houses and the King.

There may be much dispute upon this question, the strongest allegation against it is that it will prejudice the Plaintiffs execution, but since the party priviledged is not to be arrested for any debt, Trespals, or contract *prout An. 5. H. 4. no. 7. Anedicto* none can be arrested during the Parliament, but for Treason, Felony, or breach of the peace, *prout An. 8. H. 6. no. 57.* My opinion is that the arrest upon an execution for debt, trespass, or contract is meerly void: And then it can be no prejudice to the Plaintiff, but he may have a new execution after the end of the Parliament, so that an Act to deliver him that is so arrested, or to save the Plaintiffs rights for a new execution is (*ex abundanti*), and needless.

*The opinion of the Judges in Thorps  
Case An. 31. H. 6.*

**A**S for declaration of the proceedings of the lower Courts in such cases as Writs of *superseas* of priviledge of Parliament be brought and delivered: The Chief Justice said there be many and divers *superseas* of priviledge of Parliament brought into the Court, but there is no general *superseas* brought to surcease all process, for if there should

should be, then this high Court of Parliament that ministreth all iustice and equitie should let the proces of the common Law, and so he shall put the partie complainant without remedie for so much as actions at common Law be not determined in this high Court of Parliament: and if any person that is a Member of this high Court of Parliament be arrested in such cases as be not for Treason or felony, or surety of the peace, or for a condemnation had before the Parliament, It is used that all such persons should be released of all such arrests, and make an *Attorney*, so they may have their freedome and liberty freely to intend upon the Parliament,

And under correction be it spoken, the declaration of the Judges in *Thorps Case* being Speaker, and arrested in the interim after the adjournment of Parliament, *An. 31. H. 6.* (*viz.*) that there is no general *superseas* to surcease all proces, must be understood for all time and not for all proces, and thereby to exempt executions, and their declaration at that time also that if any person that is a Member of this high Court of Parliament be arrested in such Cases as be not for Treason, or Felony, or security of the peace, or for a condemnation had before the Parliament, that is used it all  
such

such persons shall be releafed of such arrests, &c. cannot be underitood to except arrests upon execution fitting the Parliament, but of such arrests in the interim between the adjournment and the accesse as *Thorps* was, for otherwile to say that the priviledge is from arrests for debt, is meer frivolous, and but a shew of priviledge and no priviledge in deed: and whereas the Judges did then further declare that it is used that all persons should be released upon such arrests, and make an Attorny, so they may have their freedome and liberty fully to attend upon the Parliament: I am of opinion that in such Cases they did not use to make an Attourney at all, for the partie had a *super sedes* to stay all proceedings against him, for it is a breach of priviledge to Commence but a suite in Parliament time against a Member thereof, or else *Bogo de Clare*, had not been punished for citing the Earl of *Cornwall*, whereas he might appear by a Proctor, *An. 8. E. 1.* nor had the Master of the Temple his petition been denyed to distrain upon a house of the Bishop of Saint *David*s in Parliament time, whereas the Bishops might make an Attorny to prosecute a *Replevin*, *An. eodem E. 1.* nor would King *E. 2.* have commanded by Proclamation that the Justices of Assize should

should *Supersedere*, where Barons or other Summoned to Parliament were parties, they then not being arrested, but Defendants only; It is not enough that a Member of Parliament be free in person onely, but in mind also, but how can his mind be free if he be subject to Suits and Executions, and being arrested in Execution, be without remedy for his liberty, unless by a solemn Act made by consent of King, Lords, and Commons; so that I conclude, leaving others to their own sense in this poynt, That all Arrests upon Execution are meerly void in this case, that the party so arrested might be set at liberty by a *Supersedeas* out of the *Chancery*, & that such deliverance is no prejudice to the Plaintiff, the former arrest being none, but meerly void.

But if you demand for ancient precedents I answer, there are none recorded, for that the *Supersedeas* was granted of course, (being due) and needed no Petition for it, yet there are Precedents of latter times to prove it directly, (*viz.*)

*Ex Journal. Domus Communium Die Mercurij, 22. Februarii, Anno 18. Eliz.* report was made by Mr. Attorney of the Dutchy, upon the Committee for the delivery of Mr. *Halesman, Edward Smalleye*, arrested upon

Execution that the said Committees found no Precedent for the setting at large by the Mace, any person in arrest, but only by VVrit) and that by divers Precedents of Record perused by the said Committees, it appeareth, that every Knight, Citizen, and Burgeses of this house, which doth require privilege, hath used in that case to take a corporal Oath before the Lord Chancellor, or Lord Keeper of the great Seal of *England*, for the time being: That the party for whom such Writ is prayed, came up with him, and was his servant at the time of the Arrest made, and thereupon Mr. *Hall* was moved by the house, that he should repair to the Lord Keeper, and make Oath in form aforesaid, and then to proceed to the taking of a Warrant, for a Writ of privilege for the said servant, according to the said Report of the said former Precedent.

By this appears the remedy for their liberties out of Arrests, and that Executions are not exempted, for Mr. *Hall* his man was then in Execution, as appears afterwards in the same Journall: I find not the Burgesse did take an Oath in case of privilege for his own liberty, happily the Sheriffs return, or a certificate thereof was sufficient.

The VVrit of privilege being so easie to be



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be had, what needed any Petitions to be made by the Commons to the King, and the Lords for the same. And as there is no Precedent for this in the time of *E.3. R.2. H.4.* nor *H.5.* so there are none to the contrary, and the Lords in *Queen Elizabeths* time, did usually of their own authority deliver their servants out of Execution if arrested in Parliament time.

But now this doubt is cleared by the statute of *Anno 1<sup>o</sup>. Jacobi, Cap. 13.* for new Executions to be had against such as are delivered out of Execution by priviledge of Parliament, and for discharge of them, out of whose custody they are delivered, which statute notwithstanding saith, that it was heretofore onely doubted of, whether such deliverance by priviledge of Parliament were prejudicial to the Plaintiff or no.

*In what Case a new SPEAKER hath been chosen.*

**A** *Nno 1. H.4. N<sup>o</sup>.62.* The Commons presented Sir *John Cheney* Knight, for their Speaker whom the King allowed.

The next day the said Sir *John*, and the Commons came before the King, and Sir  
*John*

*John* declared, that for a sudden disease which happened, he was unable to serve: And that the Commons had chosen Sir *John Dorewood* in his place, beseeching the King to allow of him, which the King did and commanded him to be Speaker, N<sup>o</sup>:63.

Anno H.4. The Commons presented *William Sturton* their Speaker, the 18. Maij, the 22. of May, the said *William Sturton* made a Speech to the King, on the behalf of the Commons, and being required to exhibit certain Articles in writing, he immediately promised so to do.

On the 25. of May, Sir *John Dorewood* did on the Commons behalf deny that they had given their assent to exhibite the said Articles in writing, N<sup>o</sup>:9.

And on the third of June, the Commons presented the said *John Dorewood* for their Speaker whom they had chosen, for that the said *William Sturton* lay sick in his bed, and was not able to execute the said Office, N<sup>o</sup>:11. It should seem *Sturton* was sick for grief, not that the King was not first acquainted with their choice of a new Speaker, before they presented him.

Anno 15. H.6. The Commons presented Sir *Thomas Tyrrell* Knight, their Speaker in January.

The

The 11. of *March*, the King understanding that Sir *John Tyrrel* was fallen sick, commanded the Commons to chuse a new Speaker, which they did that day.

*Anno 28. H. 6.* Sir *John Popham* Knight, was presented Speaker, he desired to be excused in respect of his age, And that a new choice might be made, whereunto the King agreed; And thereupon the Commons chose and presented Sir *William Tresham* Knight, the same day.

*Anno 31. H. 6.* *Thomas Thorpe* was presented Speaker, after the adjournment of the Parliament he was arrested in execution at the suite of the Duke of *Yorke*, The Commons at the access the 14. of *February*, pray his liberty, which was denied; And the Commons commanded to choose a new Speaker: The 16. of *February*, the Commons sent word that they had chosen Sir *Thomas Charleton* Knight, for their Speaker in place of the said *Thomas Thorp*, and the Chancellor answered, that the King liked him, N<sup>o</sup>: 29. these are all the ancient Precedents.

*Anno 5. Eliz.* *Thomas Williams* Esquire, was presented their Speaker.

This Parliament is prorogued divers times.

The Speaker dyes in the *interim*.

At

At their Accessle, *Anno 8. Eliz. 30.* of *September*, the Commons (by four of their house) signifying their Speakers death to the Lords, requesting their Lordships aide, to intimate the same to her Majesty, which was done.

On the first day of *October*, the Commons were assembled in the upper house: And her Majesties Commission read, directed to the Lord Keeper, repeating the whole business of Parliament, commanding, constituting, & appointing the Lord Keeper in her name, to call the Commons before his Lordship, and the Lords in the higher house of Parliament, and there in her Majesties name to will and command them to resort to their accustomed place, and there to chuse amongst themselves a new Speaker: And after they have made their Election, that three or four of them, for and in all their names, shall signifie the same unto her Majesty; And thereupon her Majesty will signifie unto them, on what day they shall present him unto her, this is the effect of her Commission.

The next day the Commons presented Sir *Richard Onslow*, the *Queenes* Solicitor for their Speaker.

*Anno 14. of Eliz.* *Robert Bell* was presented Speaker, the Parliament being prorogued

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rogued divers times, he was made a chief  
Baron of the Exchequer, and dyed at the ac-  
cesse 16. of *January*, Anno 23. *Eliz.* the  
Commons acquainted the Lords with his  
death, and the same course was taken for a  
new Election, *prout antea*, Anno 18. *E-*  
*lizabeth.*

*The Commission for Choice of a*  
*new SPEAKER.*

**E**LIZABETH by the Grace of  
God, Queen of *England, France,*  
and *Ireland*, Defender of the Faith, &c.  
To our Trusty, and right VVel-beloved  
Councillour, Sir *Nicholas Bacon* Knight,  
Lord Keeper of the great Seal of *England*,  
Greeting; VWhereas in the beginning of this  
present Parliament holden at *Westminster*,  
the 17. day of *January*, in the first year of  
our Reign, the Knights, Citizens, and Bur-  
gessees, being assembled in the same Parlia-  
ment, were commanded by us to go to their  
accustomed place, and there to chuse amongst  
themselves one to be their Speaker, accor-  
ding to the accustomed manner, whereupon  
the same Knights, Citizens, and Burgessees,  
did elect and chuse one *Thomas Williams*  
Esquire,

Esquire to be their Speaker; And the same their election, did afterwards certifie unto us, which we did allow and ratifie, since which time, this our present Parliament hath been continued by divers prorogations, untill the 30. of *September*, in this present eighth year of our Reign; At which day the Lords spiritual and temporal, & also the said Knights, Citizens, and Burgeses, being assembled for this present Parliament, at *Westminster* in their accustomed places; The said Knights, Citizens, and Burgeses, have declared unto us, that the said *Thomas Williams* since the last session of this present Parliament is dead, and thereupon have made their humble suite and Petition unto us, that they might have licence and commandement from us to proceed and elect amongst themselves, one other to be their Speaker, for the rest of this present Parliament yet to come; wherefore we having certain and perfect knowledge that the said *Thom: Williams* is dead, as they have alledged: And considering their humble Petition very meet and necessary to be granted, have appointed and constituted you, and by these presents we do will, and command, constitute, and appoint you for us, and in our names, to call the said Knights, Citizens, and Burgeses, before you, and other

ther the Lords spiritual and temporal assembled in this our present Parliament, in the higher House of our Parliament at *Westminster*, and then for us, and in our names, to will and command the said Knights, Citizens, and Burgeses, to resort to their accustomed place; And there to elect and chuse amongst themselves, one sufficient and able person to be their Speaker; for the rest of this present Parliament yet to come; And after they have so made their election, That then three or four of them, and in all their names shall signifie unto us; And thereupon we will further signifie our pleasure unto them, what day and time they shall present the person elected before us, As heretofore hath been in like cases accustomed to be done: wherefore our will and pleasure is, that you do diligently attend about the doing of the premises, and execute the same with effect; In witness whereof we have caused these our Letters of Commission, to be sealed with our great Seal, witness our self at *Westminster*, the first day of *October*, the 8. year of our Reign.

The last Ceremony used the first day of the Parliament is, that when the Lord *Chancellor* hath ended his Speech to the Commons to chuse their Speaker, then the Clerk stands

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stands up, and reads in *French* the names of  
the Receivers and Tryers of Petitions.

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*By whom Tryers and Receivers of  
Petitions were appointed, and  
when.*

## CHAPTER the VIII.

**S**OME Records make it doubtful, whether  
the King and his Council alone, or the  
King, his Councell, and the Lords did appoint  
these Receivers and Tryers, I will recite the  
Precedents, and then deliver my opinion.  
*Anno 6. E. 3.* In the Parliament held at *Yorke*,  
on *Wednesday Octab. sanct. Hillarij*, on the  
same *Wednesday*, it is agreed by our Lord the  
King and his Council, that the Petitions be  
recorded, as was agreed in the last Parlia-  
ment, and the petitions be delivered unto Sir  
*Henry Edneſton* Clerk of the Parliament.

*Sir Thomas de B.*

*Sir Thomas de E, &c.*

*Item*, it is agreed that the Arch Bishop of  
*Yorke*, the Bishop of *Ely*, &c. shall be Try-  
ers



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ers, and proceedes and shewes how they  
are to be answered, &c. And the Parliament  
was adjourned to the next day, for that the  
Lords were not fully come, and the cause  
of summons was pronounced the next day,  
which was reckoned the second day of the  
Parliament.

*Anno 14. E. 3.* The Parliament held at  
*Westminster*, the *Wednesday* next after Mid-  
lent Sunday, in presence of the King.

First, it is entred in the Roll that Procla-  
mation was made in *Westminster Hall* against  
wearing of Weapons, Ryots, &c. and unlaw-  
ful games near the Parliament House, (then  
thus) *& mesme le jour searent les souzes Cretz*  
*Cesta voir: Sir Thomas de Brayton soit*  
*Clerke de Parliam.* Item pur Receivire les  
*Petitions d'engleterre sont Assignes Mich. de*  
*Wats. Tho. B, &c.* Then the time for the  
delivery, and the Tryers of Petitions.

Then that the *Thursday* next following,  
the Parliament was adjourned unto *Satur-*  
*day, &c.* on which day was declared the cau-  
ses of summons.

So here they are appointed in the pre-  
sence of the King, but it is not named by  
whom.

*Anno 15. E. 3. Luna, 15. Pascha*, the  
Roll being thus, first it is agreed that Sir

P

Thomas

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*Thomas Broughton* be Clerk of the Parliament.

*Item*, it is agreed by our Lord the King, and those of his Council who were then come, that a Proclamation be made that none shall bear armes, &c.

Then followes the ordinary proclamation.

*Item*, in *Crie sic fait*, that whosoever will exhibit Petitions unto our Lord the King and his Council, that they exhibit them between this and *Saturday* next, &c. & *seront Assignes*, to receive the Petitions of England, these under written, *Sir Thomas de E*, &c. and so names the Receivers and Tryers.

*Item*, It is agreed for that the prelates, Earls, Barons, and other Grandees, are not yet all come this *Monday* the first day of the Parliament & to continue the Parlia. to the next day, being *Thursday*, &c. From thence it was continued also until *Wednesday*, unto *Thursday* for the same cause, & on *Thursday* the cause of summons was proposed.

*Anno 27. Ed. 3.* the Parliament was summoned to begin on *Monday 15. Pascha*, the King and some few Lords came, and the Parliament was continued to the next day being *Tuesday*, on which *Tuesday* it was agreed by the King and Councell, that Proclamation

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clamation be made against wearing of Armes, &c.

And a Proclamation was made the same day, for delivering of Petitions by Monday next, to the King and his counsell.

*Et seront Assignez*, to receive the said Petitions, &c. *prout Anno 15.* And on Wednesday following the cause of Summons was declared.

Anno 18, E. 3. *Luna proxim. post Octab Trinitat.* The Roll begins thus, *Enprimes fait assav. q. a Mesme le lundy*, there assembled in the Parliament Chamber, our Lord the King, and the Prelates and Grandees under written, *viz.*

The Arch Bishop of *Canterbury*, The Bishop of *Chichester*, *Bath*, and *Ely*, and the Earl of *Huntingdon*, together with some Abbots and Barons, and Knights of the Counties, (*Et foi recitz devant eaulx, &c.*) The summons of the Parliament to be as on that day; And the small appearance wherewith the King was offended, &c. And the King commanded the Parliament to *Tuesday*, being the next day.

*Item*, be it remembred, that our Lord the King commanded Proclamation to be made, &c. against wearing of weapons: And on the said *Tuesday* our Lord the King, and the

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said Prelates and the Bishop of London, and  
the Cardinal, together with the said Gran-  
dees, assembled again in the said Chamber:  
*Et illoques furent accordes les noms du Ceux,*  
*qui receveroy ientles petitions du Parliam.*  
*en la Manner q se fuit Cest'ascavoir Primere-*  
*ment sont Assignez de Receyvors les Petitions*  
*d'engle terr.*

And so named the Receivers and Tryers,  
and because the Prelates and other Gran-  
dees were not come on the said *Tuesday*, *Si*  
*fut accordes et assentnz de continue le Parliam.*  
*tang; au Mesterday pur attendre la venne des*  
*ditz grandes et de ce Mesterday tang; a Tue-*  
*dy*, on which *Tuesday* the cause of Summons  
was propounded, &c.

There are some Precedents of this nature,  
*Tempore* Ed. 3. to shew that the King & some  
Lords met the first day of the Parliament:  
And for that there appeared but a few Lords,  
The cause of Summons was not then declar-  
ed, onely Receivers and Tryers of Petitions  
were appointed, and the Parliament continu-  
ed unto another day, and the Records do  
not say directly by whom they are appoint-  
ed, *prout Anno 20. E. 3. Furent Assignez,*  
but saies not by whom.

By these it doth not directly appear by  
whom these Receivers and Tryers of Petiti-  
ons were appointed. That

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That of the 6. *Ed. 3.* saith *pur nostrei sur le Roy & son Councell*, by his Councill are here understood those of the *Privy Council*, who were summoned to parliament, and not by the Lords of Parliament, as shall be declared elsewhere.

The rest speaks indifferent that they were assigned, but names not by whom.

*Vide* the Parliament Roll of *Anno 37. Ed 3.* when the Summons were declared first, before the names of the Receivers and Tryers were published according to the use at this day, and of all Parliaments since the 29. of *E. 3.* and there it is thus in the end of the cause of Summons; *Et autre le dit Roy volt q. si nul se sent greutz metto avant son Petition en ce Parliam. et oi ne avoir Convenable Repors et sur ce ad Assignee ascans de ses Cleres en le Chancellerie receivoirs des ditz Petitions*, then followes their names.

Here it appears, that the Kings will is, that if any find himself grieved, that he exhibit his Petition, &c. and he hath assigned certain of his Clerks of the *Chancery* to be Receivers, &c.

*Anno 28. E. 3. Anno 43. E. 3. consm'e.*

*Anno 40. E. 3.* The Lord Chancellor concludes his speech touching the Summons, The Kings will is, *que chescun qui se sent*  
P 3 *griever*

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*Greivez meile devant sa petition a ces sont assignez per luy de seore et aussi de les triers.*

The rest speaks indifferent, but this satisfies me fully, that none but the King or the Lord Chancellor *de per luy* appoints these receivers and tryers, &c.

I have perused all the Laws of E. 3. of purpose for this that some doubt hath been made thereof.

*Who were anciently appointed Receivers and Tryers of Petitions.*

**R**eceivers of Petitions were ever the Masters of the Chancery, the Records name them *Cleres de la Chancellary*, and no other were anciently appointed, but they say that *An. 6. E. 3.* the Clerk of the Parliament who I think was a Master of the Chancery is appointed one, but none that had Writs of Summons were appointed Receivers, &c. since *6. E. 3.*

This order was constantly observed whilest these Receivers and Tryers were in use: but since they began to be out of use and named (*pro forma tantum*) the Judges are mingled with them: as none that were summoned to Parliament were appointed Receivers, so

none

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none but they that were summoned were appointed Tryers of Petitions.

They were ever of the Prelats, nobles and Judges.

And the Chancellor and Treasurer were appointed to be called when need required, and they should attend as some Records have it.

*An. 21. E. 3.* the Receivers, and Tryers of Petitions of *England, &c.* shall call the Kings Serjeants, and the Tryers of Petitions of *Gascoyne* shall call unto them the Justice and Treasurer of Ireland, for *Irish* business if need be, then it follows *Es pur efforcer les Auditors, et Tryors des ditz Petitions*: as well for *England* as for other places these under-named are ordained.

The Arch-Bishop of Canterburie,

The Chancellor.

The Treasurer.

And the Chief-Justice to be with the said Treasurer when they may intend it and need shall be.

*Within what time the Petitions were to delivered.*

**P**rimo die debet fieri Proclamatio primo in Aula vel Monasterio tenetur et postmodum

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*in civitate vel villa quod omnes illi qui petiti-*  
*ones et querelas deliberare voluerint ad Parli-*  
*amentum, quod illas deliberent a primo die in*  
*quinque dies proximum sequentes, ex Man-*  
*nuscript. modus tenendi Parliamentum Cap. de*

This order was anciently observed as it may appear by the Parliament of E. 3. where the Proclamation is mentioned *vide* 15. 17. 20. 25. Ed. 3.

In all the parliament *Rolls*, which Record their Receivers, and Tryers day is limited for the delivery of their Petitions.

They seldome allow six dayes which hath some times been prolonged for 2 or 3 dayes *ex gratia Regis prout An. 25. E. 3 Octabis purificationis et 25. E. 3. festo sanct. Hillarii.*

The reason of this short time, for the deliverie of Petitions, was for that the Parliament did seldome last many dayes: And therefore they werethen appointed also on the first day of the Parliament, although it was afterwards adjourned to another day.

Here may be a doubt of the time for answering these Petitions whether during the Parliament only.

As many as time would permit were answered sitting the Parliament, and to that purpose the severall Tryers had severall places to meet in, and they were often put in  
mind



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mind by the Chancellor to attend the same  
*prout An. 23. E. 3. no. 8. in fine.*

*What kind of Petitions they were*

**T**hey were for the most part petitions for private persons for relief of any wrong or for the Kings grace *prout.*

*An. 1. E. 3. Petitis Bartholomeu de Badlesmeere* for restitution to Lands, and Charters, taken violently from him.

*Petitis Henrici Com. Lancaster* for delivery of evidences.

*Petitis Johannis de Vinne* to be restored to his office.

*Petitis Thoma de Northrope* to be allowed his costs layed out in keeping the Kings Cattle of Bromham.

*Petitis William filii Eudonis le Zouch* for outlawry for murther.

*Petitis Thoma de Brackly*, of his liberties of Weasts and Strays, &c. seized by the King.

*Petitis Rici. de troyers*, to be allowed a debt due by the King in his account.

*Petitis Balliverum, et proborum hominum ville de Norwich* to be allowed 200 pound which King Edward the third borrowed of them.

*Petitis*

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*Petitio Liciae et Multon*, to have justice in a sute begun in the Kings Bench against the Kings Father for certain mannors.

*Petitio Elizabeth Multon* against delay of Justice.

*Petitio Francis Massey* and other Merchants strangers touching a wrong done them in *France*, by Merchant strangers who are now in *England*: *Petitio Ode Lacer* Merchant of *London*, for a redress touching a depredation in *Lumbardie in partibus Bononiae*.

*Petitio H. S.* against a piracie by 4. of the French Ships, &c.

And amongst these are sometimes petitions of a County, or a City, prout eodem *An. 1. E. 3. Rot. 3. in Dorso*.

*Petitio hominum Westmorland quod exonerentur de patera Balivorum Regis ibidem*.

A Petition of the Cinque Ports for an explanation of their Charter.

A petition of the Dyers of London against false fulling, &c. of Cloth, &c.

*How the Petitions were answered*

First let us see their direction in the time of *E. 3.* They were directed (*An. nostre sr le Roy et au son Councel* some few otherwise prout *An. 1. E. 3. au Councel le Roy Mon.*

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*Monſter a le Pours Prior de T.*

*Al Treſhonorable ſ Monſr. William de Clinton ſupplie, I de Tampli Merchant du Portugal: touching a robbery at Sea; Lord Clinton was Conſtable of Dover, and Admiral at that time, as I conceive,*

But this occurs very ſeldome yet they were received and answered generally, they were directed to our Lord the King and his council.

The queſtion is who are here meant by the Kings Council whether all the Lords of Parliament or they only which were of his privy council, I was long of opinion that by the council were meant all the Lords of Parliament, But if you obſerve how the answers were given to theſe petitions you ſhall find that the conſent of Parliament was very ſeldome required.

*Vide 6. E. 3.* which is the firſt Parliament that mentions the manner thereof, and thereafter the names of the Receivers and Tryers are appointed it follows.

Item it is agreed that the petitions which ſhall be tryed and determined by the aforeſaid prelates Barons, and Juſtices ſo appointed Tryers, ſhall be delivered over into the Chancery under the ſeals of two or one of them at the leaſt. And that the reſt of the petitions

shall rest under the seals of the said Tryers in the custody of the Clerks, untill the next day, and so from day to day, and that the petitions which are to be tryed *Coram Rege*, be tryed before his Majestie calling unto him whom he please.

And that those petitions shall remain under the Seals of the auditors or of some of them, untill they be reported before the King.

Here you see that the petitions are to rest under the seals of the Tryers, and in the Custody of the Clerks (that is of the Receivers) untill they be answered, and then to be sent from day to day, as they are answered unto the Chancery.

Except the petitions *Coram Rege*, that is those that required the Kings Grace, they were to be tryed before the King, and to rest in the mean time under the seals of the Auditors (*viz*) the Tryers.

To prove that by these words (the Council) are not meant all the Lords of Parliament but the Kings Council only, *vide*, *An* 31. *E.* 3. no. 63. The answer of the Petition of the Commons (*viz*) *Il semble au Council que fait affair par grant bien sil plaist au Roy et a les gentz de la terre. Et puis nostre Seigneur le Roy per assent des gentz Commanda a la dite Coment adonque este autz devant luy auiser*  
Come,

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Come, &c. Touching an Act of provision  
against Rome.

Where I observe also a good testimony  
that Bishops are not Peers (or *gentes de la terre*)  
they are not here understood for they  
never medled in any thing against the Pope.

And the answers in these private Petitions  
were such ( as in my opinion ) required not  
the consent of Parliament, *prout* if the Petition  
were for wrong done by a private person:  
*Ro.* let him have a Writ in the Chancery  
to enquire thereof, and thereupon *fiat*  
*justitia*, if for allowance of any thing in  
their account, &c.

*Ro.* let him have a Writ in the Chancery  
directed to the Treasurer, and Barons of  
the Exchequer, to view and examine the  
same, and thereupon to make the allowance  
and the like.

If for delivery of Charters or the like in  
the Kings custodie. *Ro.* let him have a Writ  
in the Chancery to the Treasurer and Barons  
of the Exchequer, to make search, &c.

If for reversal of an outlawry or the like,  
let him have a writ in the Chancery to the  
justice of the Kings bench to cause the Record  
to be brought before them, and if there  
be error to reverse the same.

If for Piracy, or any other wrong done  
by

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by Marchant strangers in foreign dominions  
Ro. let the Petitions be delivered in Chancery  
and upon hearing of the cause (let justice be  
done *secundum legem in tali usu usitat.*)

For these and more such peruse the Petiti-  
ons of E. 3.

All their remedy is out of the Chancery, yet  
now and then, a petition is of such weight  
or difficulty, that the Matter is reported to  
the house and there openly heard, and de-  
termined (*prout* the Petition of the Abbot of  
*Thornton super Humber*) touching lands re-  
covered by him in the Kings bench, whereof  
he was in possession, and afterwards dislei-  
zed by *Hugh de Spencer*.

The answer is *Recordium et processus pre-*  
*dicti Monstret, in Parlamento ita quod fuit*  
*inde fiat A. 1. E. 3. Rot. 1. in dorso.*

And the long Petition of the two *Corbets*  
*Eodem An.* which depended *Tempore E. 1.*  
*et 2.*

But it was answered *An. 11, E. 3.* by Try-  
ers thus. *Soit Ceste Petition soit Mande a luy*  
*pur mesme le Breese q il fac regarder tout les*  
*proces dont mencier est fait en cest Petition et*  
*Appellez Zeux qui sont de la dis Besoigne sans*  
*q il ne dyle mye an fndgment sanz le Roy An.*  
*1. E. 3. Rot. 9. Dorso,* they sued for the Ca-  
stle of *Tremington*, and divers other Lands  
which

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 which *Roger de Vantort* (whose heirs they were) gave unto *Richard King of Almaine* (the Earl of *Cornwale*) and to the heirs of his body, the remainder to the heirs of the said *Roger Vantort*: The Petition of *Elizabeth de Burgo* is worth the observation. It is touching a recognizance enforced from her unto *Ed. 2.* not to rejoyce any of his enemies, not to marry without his license nor to sell any of her Land, without his consent, the Copie of which recognizance was annexed to the petition: the Answer is by the Tryers, (*Perce q tesmoigne est q. le dit escript est en la garderobe dit breise in Chancery au gardeyn delagarderobe de fair venir lescript de vant le Consaile sanz delay.* Then follows (*pur quel endorsement*, The Writ was made, which was there recyted and directed to the Clerk of the privy seal, (who was also Master of the *Wardrobe* commanding him to bring the same writing *Coram Consilio nostro in presente Parlamento*, &c. *Teste Meipso, &c.*

*Per Petitionem de Consilio.*

**W**Hich shews that the Chancellor had no other Warrant then the endorsement of the Petition.

The

The Clerk of the privy Seal by vertue of this Writ brings in the said writing, which being examined and delivered in full Parliament, it was considered by the Lords and Commons that it was contrary to the Laws of the Land, & all reason; and therefore it was damned, *per agarde del Parliament*, And delivered it unto the said *Elizabeth*: By this Petition you may perceive that what was done in full Parliament, is so recorded.

So the long Petition of *Gee Staunton An. 14, E. 3.* was viewed and read in full Parliament, and assented unto by all in full Parliament: It was to demand Judgment in a Case depending in the Common pleas, which was of such difficulty for point in Law, that the Judges did forbear to proceed, and so the Lords of Parliament directed them on which side to give Judgement.

Note that the Commons Joined with the Lords to damn the recognizance of *Elizabeth de Burgo*, and so it was necessarily to avoid a Record; but the Commons did not join in the assent touching *G. de Stantons* Petition, for there the Lords did but direct Justice to be done in another Court.

In the time of *R. 2.* the Petitions were directed sometimes to the King, and his Council as in *Ed. 3.*

Some-



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Sometimes a *nostre tresdoute Sr. le Roy et ses noble Srs. en cest Parliament.*

And some (*A nostre Sr. le Roy et a touz lez et comes. deson Roialme*), but they were publick Petitions, as that of the officers of the *Mint* within the *Tower of London* and the like.

And the Parliament sitting long in those days, over they did in *E. 3.* time, most of the Answers to these Petitions (if not all) were assented unto by all the Lords *prout An. 15. R. 2.* the Petition of *Joan* the wife of *Sr. Robert Swinbourn* Knight, directed to the King, and the Lords, shewing that the said *Sir Robert* enfeoffed divers gentlemen of certain Lands to the use of her, and of her younger Children, and of his last Will and Testament: And that *Thomas Swinbourn* his Son and heir entered violently upon the Lands and possessed himself of divers goods and Chattles, &c. And by threats and maintenance kept her out, &c.

Answered thus.

The petition being read in Parliament, and the reasons of the one side, and on the other  
Q and

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and of all the Feoffees present in Parliament  
being heard, it was awarded by the King  
and all the Lords, that the said *Thomas*  
*Swinbourne* shall make full restitution, &c.  
And also that the said parties shall come be-  
fore the council of the King, at a day certain  
to be limited them by the said council, and  
there shew all their evidences, &c. And the  
council to make a good end if they can, if  
they cannot, to adjourn them over to the  
Common Law; And further that the said  
*Thomas*, find to the petitioner her Children,  
and Servants, and to the said Feoffees, And  
to the Executors of his Fathers Will, suffici-  
ent sureties for the Peace, and that he should  
do no maintenance, menace, nor other things  
whereby the Common Law may be any way  
disturbed of its right course, touching all the  
said matters. And moreover because the  
said *Thomas* acknowledged that he sent unto  
certain persons a Letter shewed in Parlia-  
ment of horrible menaces to the Kings peo-  
ple touching this matter, he is awarded to  
the Tower of *London*, there to remain at the  
Kings Will; The which imprisonment at the  
instance of the Duke of *Yorke*, the King af-  
terwards pardoned upon his good behavi-  
our.

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I have recited his answer somewhat at large, by this I gather, and by some answers of *E. 1. E. 2.* and *E. 3.* that intricate businesses were discussed in open Parliament (what answer soever the Tryers had prepared) others of smaller moment were directed to be redressed by the *Chancery* without any further trouble to their Lordships.

But the Commons were not privy to their Answers, as I noted in those of *E. 3.* unlesse it were to such as otherwise legally could not pass, prout *An 23. E. 2. West. Craft. nat. sanct. Johann. Baptisti* (A nostre Roy et a son Conseil. monstrent Ercevesques, Evesques, comites Barones et Antrez genz de la Cominaltie d'engle terre, who petitioned that they might let to farm the wastes belonging to their Mannors; which they held of the King in *Capite*, as wel within Forrests as without, without the Kings licence: which Petition is indorsed *Coram Rege*; and the Kings Answer is thus.

*Il n'e puit estre fait sanz novele lui laquele chose fere la comminaltie de la terre ne vult n'e n'uncore Assenti.*

In the times of *H. 4.* Few Petitions were directed to the King and his Council,  
Q 2 some

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some were directed to the King alone.

Some to the Lords alone.

And some to the Commons.

But I find none answered by the Commons only. If they were Petitions of grace the Commons wrote only this Inscription, under the first line *viz.*

*Soit baile as Sr. perles a Roy, or soit per le a Roy per les Seiniurs.*

The others were sent up to the Lords without any directions and here first began the private bills, now exhibited in Parliament.

In *An. H. 5. H. 6. and E. 4* there are some Bundels of Petitions extant of these times.

But I cannot determine whether they were delivered to the Receivers of Petitions or no, many of them are directed to the Commons, some to the King and his Council.

By these answers it seems that these and those also of *H. 4.* were assented unto in open Parliament and none past by the Tryers alone as in the times of *E. 3.*

After these times we have no Bundles of Petitions extant in the Tower.

*Petitions endorsed Coram Rege.*

These were Petitions of grace from the King, and therefore the Tryers might not answer them *rege inconsulto*.

I will recite some of them and the proceedings thereupon, &c. *viz.*

An. 1. E. 3. Rot. 3. *Thomas* Bishop of Worcester, petitioned that whereas he is charged in the Exchequer with divers tenths granted for E. 2. that the said tenths might be allowed him in certain Bills in the *Wardrobe*, and that payment might be made to him of the residue *per Assignation. eidem Episc. faciend.*

Ro. Let him shew his Bills in the Chancery and have a writ to the Treasurer, and Barons of the Exchequer, to allow him in Debts exacted of him in the Exchequer, the sum contained in these Bills, & *quoad assignationem sibi faciend. de residuo summa in eisdem billis Content. ponatur ista Petitio Coram Rege.*

The petition of the Bishop of Winchester shewing that the Churches of *Estnnes & Ham-*

*meldon*, are annexed to his Bishoprick as things spiritual, and whereof the *Gardians*, of the spiritualities *Sede Vacante* are only to meddle, as the use of other Bishopricks, yet *Robert de Welle* Gardian of the temporalities hath levyed the proffits thereof, and accounted for them to the King, to the value of 400 Marks, whereof he prayeth restitution.

*Ro. videtur consilio, quod occupatio de fructibus hujusmodi ecclesiarum est injuriosa, sed propter possessionem habitam in hac parte, ponatur ista petitio Coram Rege.*

*Postea retractata ista petitione Coram Rege & Magno Consilio, concessum est quod Custodes temporalium infra scripti Episcatus non se intromittant Amplius temporibus vacationum de hujusmodi fructibus ecclesiarum An. 1. E. 3. Rot. 9. Dorso*

Here at this time some Petitions *Coram Rege* were answered at the great Council, which was often assembled at the end of the Parliament, and there also were answered divers petitions of the Commons which were not answered in Parliament as shall be shewed in the 2 book *Cap. An. 14. E. 3.* at the Parliament held after Midlent, all businesses

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not being ended at *Easter*, the Parliament  
was adjourned till Wednesday seavennight  
after, and the King willed that at that day,  
the petitions which were not already answered  
should be then heard, and duly answered,  
and those undernamed were assigned to  
set upon Petitions *coram rege* (*viz*)

The Bishop of *Chester*.

The Earl of *Huntington*.

*Monfr. Thomas Wake de Lydel.*

*Monfr. John de Stonnard.*

*Monfr. William de Shareshal, &c. Associ-*  
*ez a eux les Chancellor, et Treasurer, quant*  
*Busoigne serra No. 28. & 29*

*An. 25. E. 3.* Receivors and Tryors be-  
ing appointed it followeth thus.

And that allwaies there be present when  
the laid Petitions be read, in case any of them  
doe touch the Kings Chamber, Sir *Thomas*  
*de Brembre*, or Sir *Henry de Greistock* is ap-  
pointed to be called to all Petitions that  
concerned the Kings Chamber only, and  
not generally for all petitions which re-  
quired the Kings special grace, or Bounty.

*An. 4. E. 3. Apud Winton inter Bnn del*  
*Petition. Robert de Vere* Earl of *Oxford* exhib-  
ited his petition for the office of great  
Chamber-

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Chamberlain of England, whereof his Ancesters were seized in fee by the grant of Henry King of England, untill H. 3. outed his Father Robert de Vere (sans Judgement)

The first answer is, let him come before the Councel, and shew his deeds and monuments

And having shewed his Charter to the Councel, &c. The second answer is *Pur ce q. cest chose touche especialment le Roy, soit ceste Besoigne devant le Roy et son Conseil*

The third answer to the Petition is, *soit ceste petition mande au Chancellarie, & le Chancellox pris a luy les Justices, et autres Sages en Conseil ordinent remede en ce cas.*

An. 16. R. 2. no. 32. *Inter petitiones Communium* Roberte Arnulle and Alice his wife prayed the Kings pardon for that they were wrongfully condemned for taking of 700 pound of Treasure Trove at Gilsford

Ro. let them sue to the King for this is no petition of Parliament.

The meaning is, this is a Petition of grace and could not be answered by the Councel *Rege inconsulto.*

*Nota*



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*Nota* the Kings Council prepared all the answers to the Petitions of the Commons to compare with the answer to this petition made in the upper House of Parliament. *An. Jacobi* i

That Bills of restitution to blood begin in upper House only, and ought to be first signed by the King.

*An. 1. H. 4. no. 18.* amongst the Petitions of the Commons and Citizens of *Lincolne* pray to be eased of their Fee Farme being 110. pound which they are unable to pay

*Ro.* let them sue to the King who will be gracious, which is as much in effect, as (*Ponatur ista petitio Coram Rege*) and not to begin with the Commons.

*An. 29. E. 3. no. the 18.* the Petition by the Commons touching *Alienations* without license *tempore H. 3.*

*Ro. soit Monstre, declare a nostre sr. le Roy.*

*Of Petitions endorsed per autoritatem Parliamenti.*

**T**He first of this sort I find in *An. 15. R. 2.* to the Petition of *Richard Pryour* the direction is thus. A

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*A nostre tres puissant et tres gracios fr. le Roy et a son tres honorable Councel en Parliament* complains, that whereas divers Lands in the Counties of *Glocester*, and *Somerſet*, &c. which were the Lands of *Tho de la River ſonne* and heir of *Richard de la River* (who held of *E. 3. in Capite* lately within age, and in ward to the King, and dying within age were delivered by commandement of *E. 3.* unto him the ſaid *Richard Tryor* and *Jane* his wife Couſen and Heir to the ſaid *Thomas* for that *Agnes* the Siſter of the ſaid *Thomas* was a Nunne professed in the Abbey of *Cheſton* as by the Records, &c. appeareth.

That preſently after the ſaid *Liverie* made, he and his wife were diſſeiſed by *Richard Cleydon*: and the ſaid *Agnes* his Concubine, who was a Nunne professed, & by *Tho. Brook*, &c. and their maintainors and for which they have been in ſuite theſe 15 years and are like to be utterly diſinherited, &c.

The answer is thus endorſed let this Petition be delivered in Chancery, and let the Chancellor by authority of Parliament cauſe the parties to come before him in the Chancery, and there the matter comprised in this petition be diligently viewed and examined,  
the

the reasons of the one part & the other heard; let that be done by authority of Parliament which right, and reason (*et bone foy bone conscience*) requires in the case. I may doubt whether these words, by authority of Parliament, were added to countenance this answer or no, for if they had omitted them, yet the Lord Chancellor was directed by the Parliament to proceede, and his proceedings warranted thereby, I find divers other Petitions so answered this Parliament but not all.

Divers other Petitions were referred to be determined in the Chancery that year, but they were such as could not be determined by the Common Law without these words *per auctoritatem parliamenti prout*, &c.

The petition of Sir John Panely Knight to be discharged of 30. shillings rent upon an hundred acres of assarted Lands part of his Mannor of Pay in Com: Northton, which was sometimes within the Whittlewood, but since disforrested by perambulation.

The answer is let this petition be delivered in the Chancery, and the Justices and the Kings Serjeants being called, and the matter well examined, let that be done which right and reason demands.

But

But in the following times most Petitions have the same words by authority of Parliament.

And it seems to be that they were added for that the parties were thereby directed to the Chancellor.

Whereas they might otherwise have remedy at the Common Law, and sued in Parliament only for that they were interrupted in their ordinary proceedings by Menaces, or maintenance or the like, whereby their suits in Law were become long and intricate and the Chancellor happily made dainty then to meddle in such cases, and peradventure, the defendant excepted against it, as may appear by this that the Commons exhibited their Petition against these kind of answers *An. 8. H. 3. no. 12.* in these words.

*Item* praying the Commons in this present Parliament that if any man sue a Bill or petition endorsed by these words, by authority of Parliament, let this Bill or Petition be committed to the Council of the King, or the Chancellor of *England* to execute and determine the contents thereof.

Whereas the said Bill or Petition is not by the Commons of the Land required to be  
be

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be affirmed or assented unto.

That no men to such a Bill or Petition (unless the assent, or request of the Commons be endorsed) be bound to answer contrary to the Laws of *England*.

Unto which was answered (*viz*) *soit avise le Roy.*

And so the same answers continued in the times of King *H. 6.* and *E. 4.* notwithstanding this Petition of the Commons.



*FINIS.*

